



Zoning Board of Appeals
Regular Meeting Minutes, Monday, September 24, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, September 24, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Joe Geraci, Vice-Chairman
Dan Durham, Member

Don Walker, PC Rep. to ZBA
Mary Painter, Alternate

ZBA MEMBERS ABSENT:

Loren Yaros, Chairman

Neal Porter, TB Rep. to ZBA

CONSULTANT PRESENT:

Thomas Berger, Building Official

OTHERS PRESENT:

Brian Lorenz
Eugene McNabb, Jr.

Joseph Mastromatteo
Eugene McNabb

Brandon Bauer
Phoebe Schutz

1. OPEN MEETING

Acting Chairman Geraci called the meeting to order at 7:00 p.m.

2. ROLL CALL

Loren Yaros and Neal Porter were absent.

3. MINUTES

Moved by Board Member Walker, supported by Board Member Durham to approve the September 10, 2012 regular meeting minutes as presented. **Motion carried 4-0** (Yaros and Porter were absent).

4. AGENDA REVIEW AND APPROVAL

No changes were made to the agenda.

5. ZBA BUSINESS

A. AB-2012-14, Brandon D. Bauer, 454 Fay Court, Sidwell #09-01-277-031

Acting Chairman Geraci noted that the petitioner is seeking a variance from Zoning Ordinance No. 78 to construct a fence in an easement. This case was originally before this board at the August 13, 2012 regular meeting and was postponed to this meeting to allow the petitioner ample time to provide a survey showing that the fence is not in the road and showing the actual location of the fence to his property line. Also, that the site would be staked by MISS DIG and that, as well as a list of the utilities, should all be on the survey.

Mr. Brandon D. Bauer, of 454 Fay Court, provided copies of photographs of the subject site and apologized that he was just handing them to members tonight. He noted that he could not afford to hire a surveyor, so he found the iron himself with a metal detector. When he dug it up it still had the

pink ribbon wrapped around it, so he knew that was it. It was a piece of rebar. The original surveyor was willing to sell him the same paper that he already has submitted, so that was not really helpful.

Acting Chairman Geraci noted that what was supplied was a copy from a plat book, but that's the only information we have and that's why we requested a survey.

Mr. Bauer noted that the surveyor, Mr. Huston Kennedy, told him that was his survey and that it does have his State of Michigan Licensed Professional Surveyor seal. He found the south iron with his metal detector and dug it up so he could take a picture of it. He noted that he had also found a second iron. He and members reviewed the petitioner's pictures.

Acting Chairman Geraci noted that the concern was to determine that the fence wasn't on the edge of the road.

Mr. Tom Berger, Township Building Official, commented that, technically, it's off by a couple of inches.

Mr. Bauer commented that the concrete bricks were there by the previous homeowner and if that's an issue, he will move them.

Acting Chairman Geraci inquired whether he had MISS DIG come to the site.

Mr. Bauer replied, yes. They marked the yellow lines that were going down the middle of the road pretty much. Those were the only thing that they marked.

Acting Chairman Geraci inquired, there are no other utilities underneath there?

Mr. Bauer replied, no. Also, when Home Depot came out to install the fence, that was all that was up there, too, the yellow lines and yellow flags.

Acting Chairman Geraci noted that the petitioner has dug up the two most important irons, so he believes that they have verified the location.

Board Member Durham inquired why the petitioner put the fence up to begin with down to the lake.

Mr. Bauer replied that the neighbor has a landscaping company and he kept pulling his utility vehicles into their back yard. Also, people would ride snowmobiles and dirt bikes through his yard, so he had to put up a fence.

Mr. Berger noted that it is permitted to build a fence to the water's edge.

Acting Chairman Geraci offered time for public comments on this case. No comments were given.

Board Member Walker inquired whether they are convinced that the fence is not in the roadway.

Acting Chairman Geraci noted that by the looks of the survey and the location of the irons that he found, he is convinced that the fence is not in the road.

Moved by Board Member Painter, supported by Board Member Walker regarding case AB-2012-14, Brandon D. Bauer, at 454 Fay Court, Sidwell #09-01-277-031, that the petitioner is seeking a variance from Zoning Ordinance No. 78, Article XXVII, Section 27.02, A, 11 to construct a fence in an easement. The petitioner's case was postponed until this September 24, 2012 regular meeting to allow him ample time to provide a survey showing that the fence is not in the road and showing the actual location of the fence in relation to his property line. Also, that the site be staked by MISS DIG as well as a list of utilities should be on the survey. Mr. Bauer complied with what was asked of him at the August 13, 2012 regular meeting. We have the survey and from the looks of the survey and the location of the irons that he did find, it shows that, indeed, this fence is not on the road. Therefore, I move that we **grant** this variance and not set a precedent. Also, that the petitioner actually dug up the irons that were on the existing survey that were read into the record, date stamped received by the Township on July 9, 2012. 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. Roll call vote was as follows: Painter, yes; Durham, yes; Walker, yes; Geraci, yes. Motion carried 4-0 (Porter and Yaros were absent).

B. AB-2012-20, WD Partners/Brian Lorene, 590 S. Lapeer Road, Starbucks Coffee Signs, Sidwell #09-11-428-013

Acting Chairman Geraci noted that the petitioner is seeking one interpretation and four variances from Sign Ordinance No. 138:

- 1) Interpretation/determination if section 8,F,3,a, should apply to this existing drive-thru site.
- 2) Section 8, B, Zoning District RB-2, Ground Sign ~ A variance for two additional ground signs above the allowed one ground sign to replace and move two menu board ground signs.
- 3) Section 8, B, Zoning District RB-2, Ground Sign, Height eight feet, Area, ~ A variance of 20.48 square feet above the allowed 32 square feet to replace and move two menu board signs for a total square footage of ground signs equaling 52.48 square feet.
- 4) Section 8, B, Zoning District RB-2, wall sign ~ A variance for four additional wall signs above the allowed one wall sign.
- 5) Section 8, B, Zoning District RB-2, wall sign area ~ A variance of 76.38 square feet above the allowed 40 square feet to install a total of five wall signs equaling 116.38 square feet.

He then read aloud correspondence received from Ms. Tammy Girling, PC/ZBA Coordinator, dated September 14, 2012*. There are several issues I would like to point out regarding the variances being sought on the case. The existing building was developed as a Starbucks Coffee drive-thru restaurant using a Consent Judgment between the developer and Orion Township. The Consent Judgment specifically says that the property is zoned Restricted Business-2 (RB-2) in spite of the fact that drive-thru restaurants are only allowed in the General Business-1 (GB-1) zoning districts. Signage detail is not mentioned in the Consent Judgment. In Sign Ordinance No. 138, there is a footnote that is only referenced in the zoning district where drive-thru restaurants are allowed, which is GB-1, providing for additional ground signs for menu boards. The zoning of this property does not contain that footnote because RB-2 zoning does not allow drive-thru restaurants. The interpretation/determination we are seeking is if the footnote, in the unique case, should apply to this site because it is a drive-thru and would have the same menu board needs as those properties in GB-1. If it is determined that the footnote should apply to this unique property, then the variance requesting two additional ground signs (menu boards) would not be needed. This variance was advertised for in case the determination was made that the footnote would not apply to this site. The ground signs that were requested were slightly over six feet tall (6.08). The sign ordinance allows a certain square footage for a 6-foot tall sign and lesser square footage for an 8-foot tall sign. Although the signs were only slightly over six feet, I calculated the variance needed based on the 8-foot criteria because they were over six feet. The applicant, on his

application, called the wall signs that say "drive-thru" directional signs. The signs do not have any arrows or such serving as directional so I calculated the variances needed as if they were wall signs, not directional signs. The pole ground sign located along Lapeer Road is an existing nonconforming sign. Per the applicant, this sign will have the face changed but the frame will not change and it will not be taken down to change. No variance is needed for this sign, but I did want to point out that I included this sign in the total square footage of ground signs when determining the square footage variance needed as well as the total number of ground signs.

Mr. Brian Lorenz, of 7007 Discovery Boulevard, Dublin, Ohio 43017, noted that he is an architect and planner and is here on behalf of Starbucks. Regarding the menu board, we are using the same framework. The purpose of moving the two menu boards is to improve on traffic circulation to add additional queue space from the order board to where you pick your item. It enhances the preparation time of the product, which is the main component, eat-in vs. drive-thru to that particular location. That, in a nutshell, is the interpretation and we're requesting a variance for that to continue as it exists today, it's just being shifted. The menu boards will remain the same size. He then mentioned other signs in the area.

Board Member Painter noted that she believes that they do need the signage.

Mr. Tom Berger, Township Building Official, noted that the site used to be a Hardee's restaurant in its early beginning, then it became a bank. Then after the bank it was going to be a donut shop and they started renovations and then from that point to my knowledge, that didn't happen. Then Starbucks came along and purchased it, but a consent judgment had been filed earlier, because what the bank had and what the donut shop wanted was the drive-thru portion of it and then it was acquired somehow in that process. Then when Starbucks purchased it, that judgment had already occurred, which allowed them to put that drive-thru into use.

Board Member Durham inquired how much of the signage that they've requested is mandated by corporate.

Mr. Lorenz replied, the drive-thru signage for the ground. The visibility is the concern and we need all the proposed signs to improve visibility.

Acting Chairman Geraci questioned whether the drive-thru signs were necessary on both sides of the building, when as soon as you pull in, you can see the drive-thru on the ground signs. To eliminate them would lessen the variance request.

Board Member Painter agreed.

Mr. Lorenz noted that he would be willing to concede those signs.

Board Member Walker noted that all the residents and frequent visitors know that it is there. The building has been there for 20 years and it has survived with the signage that's been there for 20 years. He has no problem with additional signage or better-looking signage, but his concerns are the number of signs. He wants it to look nice and for people to know that it's Starbucks, but he doesn't want all the signage jumping out at the drivers as they drive by.

Mr. Lorenz replied that he believes that they have a hardship by the layout of the building and by the elevation change on both additions. What they're really talking about now is two additional signs instead of five, so he would offer that up. They'll be well done. He also noted that all the signage will be switched to LED lighting, so it won't have an excessive glare at night and will be cleaner to read.

Mr. Lorenz, Mr. Berger, and members discussed re-calculations of the request.

Acting Chairman Geraci inquired whether the petitioner would be willing to eliminate those two drive-thru signs that are on the sides of the building.

Mr. Lorenz replied, yes.

Acting Chairman Geraci offered time for public comments on this case.

Mr. Joseph Mastromatteo, of 312 S. Broadway, commented that he is a dentist and fellow business person as well as connected very well with the Orion Veterans Memorial (which is next to the subject site). Starbucks has been a good supporter of the Orion Veterans Memorial and to the people who come there. He encouraged members to try to see the bigger picture and how it fits into the community as well as to those that visit our community.

Board Member Durham inquired whether one of the issues is going to be whether to treat this individual case as GB-1 because of the Consent Judgment.

Acting Chairman Geraci replied, yes.

Board Member Durham inquired, then the signage that will remain are the two Starbucks signs with one on each side and the one crest on the front and if it goes as GB-1, the menu boards will not be an issue?

Acting Chairman Geraci replied, correct.

Moved by Board Member Walker, supported by Board Member Painter regarding case AB-2012-20, WD Partners/Brian Lorene, 590 S. Lapeer Road, Starbucks Coffee Signs, Sidwell #09-11-428-013, the petitioner is seeking one interpretation and four variances from Sign Ordinance No. 138:

- 1) Interpretation/determination if Section 8,F,3,a, should apply to this existing drive-thru site and with regard to that portion of the motion, it is my understanding that the existing building was developed as a Starbucks Coffee drive-thru restaurant using a Consent Judgment between the Township and the developer. In the Consent Judgment it specifically says that the property is zoned Restricted Business-2 (RB-2) in spite of the fact that drive-thru restaurants are only allowed in General Business-1 (GB-1). There was much discussion with the Board with regard to that Consent Judgment. The signage detail is not mentioned in the Consent Judgment. In the sign ordinance there was a footnote that is only referenced in the zoning district that drive-thru restaurants are allowed, GB-1, providing for additional ground signs for menu boards. The zoning of this property does not contain that footnote, because RB-2 zoning does not allow drive-thru restaurants. The interpretation/determination is that in this unique case, it should apply to this site because it is a drive-thru and would've had the same menu board needs as those properties in GB-1. Therefore, **based upon those findings of fact, I would interpret the sign ordinance in that fashion.** Roll call vote was as follows: Durham, yes; Walker, yes; Painter, yes; Geraci, yes. **Motion carried 4-0** (Porter and Yaros were absent).

Moved by Board Member Walker, supported by Board Member Painter regarding case AB-2012-20, WD Partners/Brian Lorene, 590 S. Lapeer Road, Starbucks Coffee Signs, Sidwell #09-11-428-013, 2)Section 8, B, Zoning District RB-2, Ground Sign ~ A variance for two additional ground signs above the allowed one ground sign to replace and move two menu board ground signs; 3)Section 8, B, Zoning District RB-2, Ground Sign, Height eight feet, Area, ~ A variance of 20.48 square feet above the allowed 32 square feet to replace and move two menu board signs for a total square footage of ground signs equaling 52.48 square feet **are moot in light of the interpretation/determination** in the above-mentioned motion. Regarding 4)Section 8, B, Zoning District RB-2, wall sign ~ A variance for four additional wall signs above the allowed one wall sign, it is my understanding that the petitioner is willing to amend the request to make that two additional wall signs instead of the four additional wall signs. Regarding 5)Section 8, B, Zoning District RB-2, wall sign area ~ A variance of 58 square feet above the allowed 40 square feet to install a total of three wall signs equaling 98 square feet. Compliance with the strict letter of the ordinance would unnecessarily prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome based upon those findings of fact. Therefore, I would move that the petitioner's requests, as modified, **be granted**, because the petitioner has demonstrated that practical difficulties exist in this case. Also, that the petitioner's plight is due to the unique circumstances of the property based upon the Consent Judgment that was rendered between the petitioner and the Township of Orion. Roll call vote was as follows: Walker, yes; Painter, yes; Durham, yes; Geraci, yes. **Motion carried 4-0** (Porter and Yaros were absent).

6. PUBLIC COMMENTS

Mr. Eugene McNabb, of 2981 Judah Road, commented that on the southeast corner of Baldwin and Maybee Roads there is a truck with Miller High Life Beer advertising on it displayed in the berm area, which is not permitted in the Township since it is considered a sign.

Mr. Tom Berger, Township Building Official, noted that he will look into that.

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented that he has a second lawsuit against Orion Township through the U.S. District Court, Eastern District of Michigan and gave a copy of his paperwork to the Recording Secretary and requested that it be a part of the record.

7. COMMUNICATIONS

Acting Chairman Geraci thanked the Recording Secretary for the Board of Trustees meeting minutes that are in the meeting packets for members' information.

8. COMMITTEE REPORTS

None.

9. MEMBERS' COMMENTS

Acting Chairman Geraci requested that the Ordinance Enforcement Officer go and investigate: 1)the Miller High Life Beer truck; and, 2)the Culver's restaurant site where the owner has planted in the ground, with 4"x4" posts, a wood sign that appears to be a temporary sign and shouldn't be there.

10. ADJOURNMENT

Moved by Board Member Durham, supported by Board Member Painter to adjourn at 8:15 p.m.
Motion carried 4-0 (Porter and Yaros were absent).

* on file