

**CITY OF LAPEER
MINUTES OF A REGULAR
ZONING BOARD OF APPEALS MEETING
NOVEMBER 25, 2019**

A regular meeting of the City of Lapeer Zoning Board of Appeals was held in the Commission Chambers of Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan on Monday, November 25, 2019 at 7:00 p.m.

Members Present: Chairman Bernard Jocuns, Vice Chairman Jeff Hogan, Mr. Joe Black, Mr. Paul Parsch, Ms. Bailey RaCosta and Mr. Eric Cattane.

Members Absent: None.

Also Present: Ms. Caitlyn Habben, Rowe Professional Services Company Planning Consultant.

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

MINUTES

It was moved by Mr. Parsch and supported by Mr. Hogan to approve the minutes of the meeting held on October 14, 2019.

MOTION CARRIED.

PUBLIC COMMENTS

There were no public comments at this time.

PUBLIC HEARING SCHEDULED

Evan Foran – 908 W. Park St. – Accessory Building Setback Variances

Ms. Habben reviewed the request from Evan Foran for variances to the accessory building setback requirements of Section 7.14.04(d) for a 15 ft. by 12 ft. shed erected on the property known as 908 W. Park Street. Ms. Habben reviewed the site location, aerial photos of the subject site and surrounding area, the submitted plot plan showing the shed location and the standards required in order to grant the variance. Ms. Habben also reviewed the variance amounts being requested for the south and east side setbacks, photos of the shed and the applicant's response which states the previous plan and variances granted in order to construct an attached garage was not possible due to the location of overhead power lines on the property.

Ms. Habben reviewed staff findings in support and opposition of the variance request to each standard, that the lot is a legal nonconforming corner lot, the intent of the setback requirements for public safety and fire protection and stated the shed will be required to be finished with fire rated materials.

Discussion was held on the shed windows, the fact the shed was discovered as erected without a permit by the Building Department and previous variances granted for the proposed attached garage.

Chairman Jocuns opened the public hearing at 7:11 p.m.

Mr. Evan Foran was present and stated he was excited about the previous plan to construct an attached garage, that his contractor informed him a permit was not required for the shed that was erected and that he will follow up with the required permits and finish the shed with fire rated materials. Mr. Foran stated the shed will be utilized for an art studio with electricity, will not be used as a living area, will not have a permanently installed heating system and is constructed on concrete footings.

Mr. Bruce Huber, 219 Fair Street, was present and inquired how close the existing shed on the adjacent parcel to the north is to the property line.

There being no further comments, the public hearing was closed at 7:17 p.m.

Discussion was held on the subject location in an older section of town, previous variances granted for an attached garage, the amount of the variances requested, the need for the applicant to apply for a permit, the overhead power lines on the parcel, the proximity of the house to the east side of the shed, the option to move the shed further from the house, safety issues and the wood privacy fence on the north property line.

After discussion, it was moved by Mr. Black and supported by Mr. Hogan to approve the request from Evan Foran for the following variance(s) to construct a detached accessory building at 908 W. Park St as described below.

- A 8.25 foot variance to Section 7.14.04(d) to permit the detached accessory building on the south side of the detached accessory building to be 1.75 feet from the primary dwelling unit; and
- A 8.7 foot variance to Section 7.14.04(d) to permit the detached accessory building on the east side of the detached accessory building to be 1.3 feet from the primary dwelling unit

due to the request meeting all of the standards for granting the approval including:

- (1) The standard for which the variance is being granted would unreasonably prevent the owner from using property for a permitted purpose or would render conformity unnecessarily burdensome; and
- (2) The variance would do substantial justice to the applicant as well as to other property owners in the zoning district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others; and
- (3) The problem is due to circumstances unique to the property and not to general conditions in the area; and
- (4) The problem that resulted in the need for the variance was not created by the applicant or previous owners of the property; and
- (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.

ON A ROLL CALL VOTE:

Yeas: Ms. RaCosta, Mr. Hogan, Mr. Black and Mr. Jocuns.

Nays: Mr. Cattane and Mr. Parsch.

Abstain: None.

Absent: None.

MOTION CARRIED.

Marvin Karana – 1040 S. Lapeer Rd. & 1029 Baldwin Rd. – Drive-Through Restaurant Facility within the Prohibited Area Along M-24

Ms. Habben reviewed the request from Marvin Karana for a variance from the drive-through restaurant restriction of Section 7.13.04(b)9 in order to allow drive-through facilities on the properties known as 1040 S. Lapeer Road and 1029 Baldwin Road located within the restrict area between Tower Street and Turrill Road. Ms. Habben reviewed the site location, aerial photos of the site, the drive-through restriction area and the Planning Commission's previous determination that the parcel is located in the restricted area. Ms. Habben also reviewed the submitted conceptual plan showing 3 separate drive-through restaurant establishments and the east-west line of Tower Street which runs through the 1040 S. Lapeer Road parcel.

Ms. Habben reviewed the applicant's response to the approval standards, the location of the southernmost drive-through 300 feet south of Tower Street, the fact the restriction is a current rule in the Master Plan and Zoning Ordinance and the Planning Commission's recent review and current consensus to reaffirm and potentially expand the restriction area during the ongoing Master Plan update process. Ms. Habben reviewed staff findings in support and opposition of each standard and stated the property could be divided in a configuration to allow two drive-through restaurants on Baldwin Road. The applicant would still need to apply for a rezoning request for the parcels.

Discussion was held on the fact sit down style restaurants are allowed on the subject parcels and activity on the Belle Tire and Taco Bell sites.

Chairman Jocuns opened the public hearing at 7:40 p.m.

Jim and Mary Gross, 1000 Baldwin Road, were present and Mr. Gross stated he is very much opposed to the request, that he moved to his home two years ago from Davison, that he considers the area residential and expressed concerns with vehicle lights shining into his house and increasing traffic on Baldwin Road. Mr. Gross stated he feels the proposal is unfair, that the whole atmosphere of the residential community will be changed, that traffic will get worse and he will be unable to get in and out of his driveway.

Anita Kirk, 1210 Baldwin Road, inquired on the definition of the uses that are specifically prohibited and allowed and stated she is opposed to any new driveways on Baldwin Road for developments on M-24.

Clara Longoria, owner of commercial property on M-24 in the restricted area, stated she is for the proposal to allow the drive-through restaurants on M-24, that it will be a bridge for development and keep the traffic on M-24, that she has had 5 to 7 offers from franchise restaurant businesses interested in her property, that it is frustrating, that the roads to facilitate the traffic are in place and she is for proposal.

Dr. William Laur, owner of Arborview Veterinary Clinic at 1006 S. Lapeer Road, stated that he is opposed to the request to lift the restriction, that the plan is what was set forth by the City and that if changed the flood gates will open up which will be a direct violation to what was proposed years ago. Dr. Laur stated intent can change, however, development has occurred in the area for uses other than drive-through restaurants, that he feels the original thought is not outdated at this point and he is in favor of keeping the drive-through restaurant restriction in place.

Carl Kirk, 1210 Baldwin Road, stated he understands Culver's was previously denied approval to locate on M-24, that if now the City were to allow drive-through restaurants in the area it would be open to liability, that he also feels the flood gates would open for drive-through restaurants and he does not want the restriction lifted.

Mark LaBaza, co-owner of the subject property, stated the property has been in his family for 40 years, that he grew up in Lapeer and that he has relatives, businesses and roots in Lapeer. Mr. LaBaza stated at one time it was hoped the area would develop with medical office uses, however, Belle Tire, Taco Bell and apartments were built. Mr. LaBaza stated his property is split by Tower Drive and nearly a mile from I-69, that restaurants are running out of room on M-24, that it would make sense for a quick service restaurant to locate next to Belle Tire, that Lapeer has changed and that he is requesting that since his property is split by Tower Drive it be exempt from the restriction.

Bruce Huber, 219 W. Fair Street, stated he owns property at 1101 S. Lapeer Road in the restriction area, that M-24 is a busy corridor with 30,000 vehicles per day, that he and his neighbors to the south and north petitioned the City 10 years ago to annex and install sewer with the promise that the parcels would be zoned general commercial, that each property owner spent over \$50,000 on the sewer extension, that they were not told about conditions on the type of uses and that they felt sewer was necessary for development. Mr. Huber stated he realizes other uses are permitted which require drive-through windows, that the new trend for restaurants is not to have dining rooms, that the restriction is an impediment to development and that the Planning Commissioners expressed concerns about unhealthy food, signage and aesthetics which has nothing to do with planning and development. Mr. Huber stated that drive-through restaurants are the way of the world today, that the restriction is not a wise decision by the Planning Commission and that when the property owners made the investment into sewer it was with the anticipation of full development not limited development.

Al Sandoval, 990 Baldwin Road, stated standard #5 addresses neighborhood safety, that additional sidewalks and lighting will be needed for public safety, that the proposal puts everyone in a bind and that neighbors will move out. Mr. Sandoval stated the area would change to a commercial area, that he has gotten no sleep due to Taco Bell traffic and noise late into the night, that the issue is a tough question and that the area residents need to be respected.

The applicant's architect presented an amended conceptual plan showing a reduction in the number of drive-through restaurants from three to one with no access on Baldwin Road and stated the site has been for sale for some time with no buyers due to the restriction. The architect stated the proposed development will not change the character of the area and will allow the owner to utilize his property while providing additional employment and tax revenue.

Discussion was held on the current drive-through shown 300 feet south of Tower Street, the fact the restriction applies specifically to drive-through restaurants only, that other various drive-through uses are permitted, the extent of the southern City limits, the Master Plan and Zoning Map designations of the subject area parcels and the M-24 Access Management Plan overlay area.

There being no further comments, the public hearing was closed at 8:09 p.m.

Discussion was held regarding the conceptual plan reduction of the drive-through restaurants from three to one, the responsibility of the Zoning Board of Appeals to interpret the intent of the Zoning Ordinance, the transitional nature of the subject area, the potential to amend the current Master Plan and Zoning Ordinance to remove the restriction and the Planning Commission's reasoning for including the restriction in the Master Plan and Zoning Ordinance. Discussion was also held on the process required for the Planning Commission and City Commission to amend the Master Plan and Zoning Ordinance to remove the restriction rather than the variance process through the Zoning Board of Appeals, other types of businesses that are able to be developed in the restriction area, the need for drive-through restaurants to find other locations, traffic flow issues and the desire to protect the Baldwin Road residential area.

After discussion, it was moved by Mr. Parsch and supported by Mr. Cattane to deny the variance request from Marvin Karana to allow drive-through restaurant facilities to be located at 1040 S. Lapeer Road and 1029 Baldwin Road due to the requested variance not meeting all of the standards for granting the approval including:

- (5) Issuance of the variance would not ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.

ON A ROLL CALL VOTE:

Yeas: Mr. Parsch, Mr. Cattane, Ms. RaCosta, Mr. Black and Mr. Hogan.

Nays: Mr. Jocuns.

Abstain: None.

Absent: None.

MOTION CARRIED.

BOARD MEMBER COMMENTS

Discussion was held on the issue of variance requests coming before the board for structures which are already built and enforcement efforts of the Planning, Building and Code Enforcement departments.

It was the consensus of the board to request the Planning Commission to once again review the drive-through restaurant restriction. Ms. Habben reviewed the current status of the Master Plan update process of reviewing the Goals and Objectives section and the anticipated schedule for holding a public hearing on the Master Plan update in March or April.

TRAINING REPORT

Ms. Habben reported a board member training session is planned for the January 27th ZBA meeting.

ADJOURNMENT

There being no further business, it was moved by Ms. RaCosta and supported by Mr. Cattane to adjourn the meeting at 8:33 p.m. **MEETING ADJOURNED.**

Mr. Paul Parsch
Secretary