

**CITY OF LAPEER
MINUTES OF A REGULAR
ZONING BOARD OF APPEALS MEETING
AUGUST 26, 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, August 26, 2019 at 7:00 p.m.

Members Present: Chairman Bernard Jocuns, Vice Chairman Jeff Hogan, Mr. A. Wayne Bennett and Mr. Paul Parsch.

Members Absent: Mr. Joe Black.

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. Hogan and supported by Mr. Parsch to approve the minutes of the meeting held on June 24, 2019.

Yeas: Mr. Jocuns, Mr. Bennett, Mr. Parsch and Mr. Hogan.

Nays: None.

Abstain: None.

Absent: Mr. Black.

MOTION CARRIED.

PUBLIC COMMENTS

There were no public comments at this time.

PUBLIC HEARING SCHEDULED

ODW Properties Lapeer – 840 West St. – Drive-Through & Dumpster Location

Ms. Habben reviewed the request from ODW Properties Lapeer for variances to the drive-thru requirements of Section 7.13.04 and the waste receptacle/dumpster location requirements of Section 7.15.06 for a proposed quick-service restaurant to be constructed at 840 West Street. Ms. Habben reviewed the site location, aerial photos of the subject site and surrounding area and the three separate variances being requested which include:

1. A variance of 25.5 feet to Section 7.13.04(b)(1) which states a setback of at least sixty (60) feet must be maintained from the right-of-way line of any existing or proposed street and the drive-through window;
2. A variance to Section 7.13.04(b)(8) which requires the drive-through facility to be located in the side or rear yard, minimize view of the drive-through from the public right-of-way, and the window and menu board shall not face a residential district; and
3. A variance to Section 7.15.06(b)(2) which requires waste receptacles to be located in the rear yard or non-required side yard.

Variance Request #1

Ms. Habben reviewed the standards required to be met in order to grant the requested variances and variance request #1 concerning the 60 ft setback requirement for the drive-through window. Ms. Habben reviewed the staff findings in support and opposition of variance request #1 including the location of the parcel with 3 road frontages which requires 3 front yard setbacks which makes the subject site unique. Ms. Habben stated the board could require additional landscape screening as a condition of approval of the variance.

Mr. Matt Cole of Paradigm Design Architects was present and reviewed the conceptual design plan including the landscaping plan, tree clearing areas, the hindrance created by the 3 front yard requirements, efforts to treat the south yard similar to a side yard, the drive-through stacking requirements and parking requirements. Mr. Cole stated the proposed setback is 35 feet in order to maintain the desired 24 ft. wide drive lane for delivery vehicles on the site.

Discussion was held regarding the landscaping plan, shrub species to be planted, the outdoor patio area located on the east side of the building and the signage plan for the site.

Chairman Jocuns opened the public hearing on variance request #1 at 7:18 p.m.

Mr. Marty Leach, representing the adjacent property owner to the north Rhea Dosche, was present and stated the vehicle headlights from the drive-through traffic will be shining directly into Ms. Dosche's property, that there will be noise from the outdoor patio area and that the development will depreciate the value of her property. Mr. Leach stated the development is being crammed into a small parcel, that there are already traffic issues and congestion at the intersection, that after the new apartments are built there will be major traffic issues, that the developer made a low ball offer to purchase Ms. Dosche's property which was declined and that they are now boxing her in.

Mr. Ross Fernandez, of ODW Properties Lapeer, stated he did attempt to purchase the adjacent parcel from Ms. Dosche, however, it did not work out and is not feasible.

Ms. Clara Longoria, area business owner and S. Lapeer Road property owner, was present and stated she has been in Lapeer for 21 years, that her property has been denied development for drive-through restaurants, that it is frustrating, that it does not make sense and that the developer is trying to put a square peg into a round hole on the proposed site. Ms. Longoria also stated there will be commercial truck traffic confusion at the intersection, that there is a liability concern for vehicle injuries, that a traffic study should be conducted and there will be traffic flow issues.

There being no further comments, the public hearing was closed at 7:29 p.m.

Discussion was held regarding whether to reduce the amount of the variance request to result in an increased setback, truck maneuvering space requirements, the sound level of the menu board speaker, the location of the detention pond at the southwest corner of the site and the fact the landscaping plan will be reviewed by the Planning Commission during the Special Land Use approval process for the drive-through.

After discussion, it was moved by Mr. Parsch and supported by Mr. Jocuns to approve the following variance in order to construct a quick-service restaurant with drive-through window at 840 West Street:

- A variance of 23.5 feet to Section 7.13.04(b)(1) to permit the drive-through window to be located 36.5 feet from the street right-of-way 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.

Yeas: Mr. Jocuns, Mr. Bennett, Mr. Parsch and Mr. Hogan.

Nays: None.

Abstain: None.

Absent: Mr. Black.

MOTION CARRIED.

Variance Request #2

Ms. Habben reviewed variance request #2 concerning permitting the drive-through window to be located in the south front yard and the window and menu board to face a residential district. Ms. Habben reviewed the staff findings in support and opposition of variance request #2 including the intent of the requirements for the drive-through window and stated the board could require additional landscaping buffering along the south yard.

Discussion was held regarding whether sidewalk will be constructed on the south side of the site, the approximate 6 ft. height of the menu board and whether there will be landscaping around the menu board.

Chairman Jocuns opened the public hearing on variance request #2 at 7:45 p.m.

There being no comments the public hearing was closed.

After discussion on the landscaping planned along the south side of the site it was moved by Mr. Parsch and supported Mr. Jocuns to approve the following variance in order to construct a quick-service restaurant with drive-through window at 840 West Street:

- A variance to Section 7.13.04(b)(8) to permit the drive-through window to be located in the south front yard and the window and menu board to face a residential district 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.

Yeas: Mr. Jocuns, Mr. Bennett, Mr. Parsch and Mr. Hogan.

Nays: None.

Abstain: None.

Absent: Mr. Black.

MOTION CARRIED.

Variance Request #3

Ms. Habben reviewed variance request #3 concerning the waste receptacle location in the west facing front yard. Ms. Habben reviewed the staff findings in support and opposition of variance request #3, the limited area on site permitting waste receptacle location due to the 3 front yard requirements and the intent of requiring the receptacle to be located in the side yard.

Discussion was held whether to require additional landscaping around the waste receptacle, the masonry material requirements for the enclosure, the fact the proposed location is far away from the adjacent residence, the proposed location which is more employee safe and truck maneuverability space required to access the receptacle.

Chairman Jocuns opened the public hearing on variance request #3 at 8:00 p.m.

There being no comments the public hearing was closed.

Discussion was held on the fact the proposed location is the best spot on the site to locate the receptacle, the fact the area is approved and planned for transition to commercial development, concerns with the headlights from vehicles, input received from the both the City Public Safety and Public Works departments on the proposed access drive locations, elimination of a proposed drive accessing Baldwin Road and the type of screening landscaping to require to be planted around the waste receptacle.

After discussion, it was moved by Mr. Jocuns and supported by Mr. Hogan to approve the following variance in order to construct a quick-service restaurant with drive-through window at 840 West Street:

- A variance to Section 7.15.06(b)(2) to permit the waste receptacle to be located in the front yard and to require 8 narrow evergreen trees be planted surrounding the enclosure 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.

Yeas: Mr. Jocuns, Mr. Bennett, Mr. Parsch and Mr. Hogan.

Nays: None.

Abstain: None.

Absent: Mr. Black.

MOTION CARRIED.

OTHER BUSINESS

It was the consensus of the board to recommend the Planning Commission require landscaping in excess of the minimum required in order to screen the drive-through and provide a sound buffer.

Discussion was held regarding the justification for the current restriction of drive-through restaurants along M-24 between Tower Drive and Turrill Road.

BOARD MEMBER COMMENTS

There were no additional comments from the board members.

TRAINING REPORT

Ms. Habben reported a training session will be scheduled when new members are appointed to the board later in the year.

ADJOURNMENT

There being no further business, it was moved by Mr. Bennett and supported by Mr. Jocuns to adjourn the meeting at 8:16 p.m. **MEETING ADJOURNED.**

Mr. Paul Parsch
Secretary