

**CITY OF LAPEER
MINUTES OF A REGULAR
ZONING BOARD OF APPEALS MEETING
NOVEMBER 23, 2020**

A regular meeting of the City of Lapeer Zoning Board of Appeals was held electronically via GoToMeeting and at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan on Monday, November 23, 2020 at 6:30 p.m.

Members Present: Vice Chairman Jeff Hogan, Mr. Joe Black, Mr. Paul Parsch and Mr. Eric Cattane.

Members Absent: Chairman Bernard Jocuns.

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

Vice Chairman Hogan called the meeting to order at 6:30 p.m.

MINUTES

It was moved by Mr. Parsch and supported by Mr. Cattane to approve the minutes of the regular meeting held on October 26, 2020 and the special meeting held on November 4, 2020 as presented.

ON A ROLL CALL VOTE:

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

Nays: None.

Absent: Mr. Jocuns.

Abstain: None.

MOTION CARRIED.

PUBLIC COMMENTS

There were no public comments at this time.

PUBLIC HEARING SCHEDULED

Sunoco Gas Stations / Odish – 1489 N. Main, 715 S. Main & 9 E. Genesee – Canopy Signage Variance

Ms. Habben reviewed the request from Sam and Rakan Odish, owners of the Sunoco gas stations located at 1489 N. Main Street, 715 S. Main Street and 9 E. Genesee for a variance to the 9 inch canopy signage lettering height maximum of Section 7-17.05. Ms. Habben stated similar canopy signage will be installed at all three locations. It was determined that a variance to the requirement in Section 7-17.05 to permit lettering to extend 5 inches from the face of the canopy was not required due to the proposed lettering being flush with the canopy. Ms. Habben stated the requested height variance is for 10 inches in order to allow 19 inch high backlit canopy lettering.

Ms. Habben reviewed aerial photos of each site, photos of the existing canopies, design renderings of the new canopy signage to be installed at each location and the applicant's response to the variance request. Ms. Habben reported the existing signage of 21 inches in height which is non-conforming and that the proposed letter height of 19 inches will bring the signage closer to conformity. Ms. Habben reviewed the conditions and standards

required in order to approve the variance, staff findings in support and opposition of each standard and the intent of the provision in order to prohibit sign clutter and preserve signage quality and uniformity.

Discussion was held regarding the fact the nonconformity of the signage is decreasing, whether the applicant had proposed any alternative sign height and the direction the lettering will be facing at each location.

Vice Chairman Hogan opened the public hearing at 6:49 p.m.

Ms. Sarah Mheisen, of Bazo Construction in charge of installing the signage, stated the original proposal was for 21 inch high lettering which has been reduced to the request for 19 inch high lettering, that the new canopy design visually will look nicer, newer and brighter and that only the word Sunoco will be backlit.

Discussion was held regarding the fact the requested variance is a substantial increase from what is currently allowed, that 9 inch high letters seems too small, condition of the existing signage which is old and in need of repair and updating and allowing a variance less than what is being requested.

There being no further comments, the public hearing was closed at 7:00 p.m.

Discussion was held on the request reducing the amount of non-conformity, benefits to updating the signage, additional signage at the stations including wall signage and ground signage and the recent variance granted to the Speedy Q station. Discussion was also held on the location of each of the Sunoco stations on corner lots with high visibility, that each station is located in a high traffic area and reducing the amount of the variance requested.

After discussion it was moved by Mr. Parsch and supported by Mr. Cattane to approve the request from Sam & Rakan Odish property owners of the Sunoco Gas Stations located at 1489 N. Main, 715 S. Main, and 9 E. Genesee for a variance from Section 7-15.05 to allow the subject properties to have a total canopy lettering height of 14 inches resulting in a 5 inch variance because it meets Standard 3 (A variance would significantly improve the conformity of an existing sign) in Section 7-22.04(f) and because it meets all 5 Standards in Section 7-22.04(g).

ON A ROLL CALL VOTE:

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

Nays: None.

Absent: Mr. Jocuns.

Abstain: None.

MOTION CARRIED.

Lapeer Associates – 795-813 East St. – Parking Space Variance

Ms. Habben reviewed the request from Michael McGlothlin of Lapeer Associates for a parking space variance to the requirements of Section 7-16.02 for the shopping center located at 795-813 East Street which includes Grondin's, Mancino's and King Buffet

immediately north of the ALDI store. Ms. Habben reviewed aerial photos of the shopping center including the ALDI store and the Lapeer Pointe Plaza which includes Marshalls, Michael's and several other retail stores and stated Lapeer Associates is potentially adding a 125 seat restaurant tenant on the north end of their plaza next to King Buffet.

Ms. Habben summarized the status of a current dispute between the owner of the Lapeer Associates plaza and owners of the Lapeer Pointe Plaza, 863 South Main Street Partners, LLC, regarding the details of a shared parking Reciprocal Easement Agreement currently in place. Ms. Habben reviewed the history of shared parking on the 3 separate sites and stated when the King Buffet business opened in 2016 the individual owners were notified by the City that calculation of the shared parking for the 3 parcels was nearing the maximum allowed based on the type of tenants to potentially fill any remaining vacancies.

Ms. Habben read the following two letters into the record:

November 20, 2020

Via Email planning@ci.lapeer.mi.us

Lapeer City Hall
Attn: Zoning Board of Appeals
576 Liberty Park
Lapeer, Michigan 48446

Via Email CHabben@rowepsc.com

Caitlyn L. Habben, Planner
ROWE PROFESSIONAL
SERVICES COMPANY
540 S. Saginaw Street, Ste. 200
Flint, MI 48502

**Re: Public Hearing on Lapeer Associates LLC ("Petitioner")
Petition for Parking Variance**

Good afternoon:

The undersigned represents 863 South Main Street Partners, LLC, owner of Lapeer Pointe Plaza Shopping Center (Parcel #L20-98-100-040-00)("Lapeer Pointe Plaza"). **We oppose Petitioner's request for a variance in total number of parking spaces, and note that the parking space calculation method used is flawed.**

Petitioner seeks approval, at the expense of Lapeer Pointe Plaza, as Petitioner has insufficient parking on its property to permit the more intense, restaurant parking uses it seeks to install on its property. Petitioner's calculations rely upon use of 68(!) parking spaces located on and owned exclusively by Lapeer Pointe Plaza. Petitioner claims that a certain Reciprocal Easement Agreement, dated July 1, 2015 (REA), between Lapeer Pointe Plaza and Petitioner, gives Petitioner the right to count (and, therefore, the exclusive right to use) Lapeer Pointe Plaza's parking spaces as its own. Petitioner is dead wrong. The REA grants cross easements for ingress/egress and parking as between Lapeer Pointe Plaza and Lapeer Associates on a "*non-exclusive*" basis. The REA was for mere convenience of business invitees to the shopping center, so as not to have to move their car when going from a store on Lapeer Pointe Plaza's property to one on Petitioner's property. Nowhere in the REA does Lapeer Pointe Plaza surrender its dominion and/or control over any parking spaces to Lapeer Associates. If that is what the parties intended, they would have so stated. Petitioner would have this body believe that the REA grants to it an *exclusive* right to park as many cars as he wants on Lapeer Pointe Plaza's property, even to the detriment of Lapeer Pointe Plaza.

November 20, 2020
Page 2

This is untrue, and a self-serving and tortured reading of the REA instrument. To include Lapeer Pointe Plaza's parking spaces into Lapeer Associates parking needs calculations is to read into the private contract between Petitioner and Lapeer Pointe Plaza language that simply does not exist. No court would allow this.

If the City of Lapeer grants Petitioner's request for a variance, by taking into account the parking spaces owned by Lapeer Pointe Plaza, then the City of Lapeer will have committed an unconstitutional taking, for a private purpose, and without just compensation, of the exclusive property of Lapeer Pointe Plaza. Those 68 parking spaces owned by Lapeer Pointe Plaza and included in the parking space calculations would be unavailable for Lapeer Pointe Plaza to use in the future. Such an absurd result will not be tolerated.

We caution the City of Lapeer not to be fooled by Petitioner's self-serving and erroneous reading of the REA, and urge Lapeer to deny the Petitioner's variance request in total. Any other result will necessitate action on behalf of Lapeer Pointe Plaza to protect its property rights against an unlawful taking.

Very truly yours,

MADDIN HAUSER ROTH & HELLER, P.C.



Steven D. Sallen

SDS/tm

ecc: Charles Laurencelle
Kim Hodge – Officer Coordinator (khodge@ci.lapeer.mi.us)

November 20, 2020

Caitlyn Habben
Rowe Professional Services Company
540 S. Saginaw Street
Suite 200
Flint, MI 48502

Re: Zoning Request 795 East Street, Lapeer, MI

Dear Caitlyn,

Please be advised that I am in receipt of your latest email concerning our meeting on Thursday, November 19, 2020 and however cannot agree with the conclusions reached therein. I know we discussed a lot whole bunch of contrary ideas, so things may have been somewhat misunderstood. In my view the facts are quite simple. There does now and has since September of 1992 exist a Reciprocal Easement Agreement between the Parcels of land currently owned by Lapeer Pointe Plaza and Lapeer Associates, LLC. The original document was created in the fall of 1992 with the expansion of the existing K-Mart facility and the addition of the Fashion Bug store to the north end of the Lapeer Associates development. This expansion grew this development to the configuration that still basically exists today. This entire document was necessitated by the dissimilar partnership interests and the necessity to put in place the proper operational safeguards to insure that the common goals of these partners were protected and would run with the land in perpetuity. The very first Paragraph of the original REA recognized that there existed the need **“to create a mutual and reciprocal parking and access agreement for the benefit of the different Owners and the operation of the shopping centers.**

This Agreement though updated with the insertion of Aldi in July 2016, still contains the **exact same language** as it pertains to parking. Main Street Partners (Lapeer Pointe Plaza) grants to Lapeer Associates a permanent, non –exclusive easement for those areas of the Lapeer Pointe Plaza designated or marked as parking. Lapeer Associates also granted the exact same rights to Main Street Partners.

These parcels **“shall at all times be open and available for reciprocal ingress, egress and parking by all customers, employees and invitees of all Tenants in the shopping centers located on both parcels, as if the Parcels , together, constituted a single, single-level, integrated shopping center.”**

The Reciprocal Easement Agreement does not only exist: it mirrors the stated position that the City of Lapeer has taken when concerning the parking lot usage at this location. This treatment was clearly spelled out in a letter from the City of Lapeer on September 6, 2016 after the completion of the remodeling in both locations more than four (4) ago. As a signatory to the ORIGINAL REA and its later replacement I can only tell you that this parcel was developed as one inter-woven integrated piece despite differing ownership and that the REA was simply put in place to insure that.

This request is made in accordance with the stated City of Lapeer letter. To date, I have NOT been informed of any change or seen any correspondence altering this position.



Michael McGlothlin
Lapeer Associates, LLC
Managing Member
248-366-4820 (O) 248-613-7200 (C)

Discussion was held regarding the history and evolution of parking on the 3 parcels, that the parking behind the buildings is included in the current calculation of total spaces available and whether the Lapeer Associates plaza or Lapeer Point Plaza would accommodate a drive-thru operation.

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

Charlie Laurencelle, representing 863 South Main Street Partners, LLC owner of the Lapeer Pointe Plaza shopping center stated the 3 parcels of Lapeer Pointe Plaza, the ALDI grocery store and the Lapeer Associates plaza are owned by 3 different owners each with separately owned parking spaces, that Mr. McGlothin's actual variance needed is approximately 73 spaces, that he is not in agreement with sharing parking spaces and that the Reciprocal Easement Agreement (REA) only grants convenience for not towing vehicles and does not give him exclusive rights to parking spaces. Mr. Laurencelle stated he is not willing to surrender any of the spaces on the Lapeer Pointe Plaza parcel which may affect his future tenants to accommodate the high intensity uses in the Lapeer Associates plaza.

Mr. Mike McGlothin, of Lapeer Associates, stated the parcels were originally developed as a K-Mart in 1973, that in 1985 an ACO Hardware plaza was added and in 1992 an addition for Fashion Bug was added and that since 1985 there has been a REA agreement for the entire shopping complex. Mr. McGlothin stated a new restaurant would be positive for the community, that the agreement was in place prior to the Lapeer Pointe Plaza parcel purchase, that he would like to develop his property to the best of his ability and that it is not legal or proper for Mr. Laurencelle to claim any parking spaces.

There being no further comments, the public hearing was closed at 7:58 p.m.

Discussion was held on the fact the City will not interpret the status of the shared parking agreement between the two parties, the need to confirm the exact number of parking spaces associated with each of the three parcels and the need to postpone action on the variance request.

After discussion, it was moved by Mr. Black and supported by Mr. Cattane to postpone action on the parking space variance request from Lapeer Associates for 795-813 East Street due to the need for additional information to clarify the parking situation and how to calculate the parking for each of the multi-tenant centers.

ON A ROLL CALL VOTE:

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

Nays: None.

Absent: Mr. Jocuns.

Abstain: None.

MOTION CARRIED.

OTHER BUSINESS

Election of Officers

Discussion was held on the election of officers to take effect in January 2021. After discussion, it was moved Mr. Parsch and supported by Mr. Cattane to postpone action on the election of officers until the next meeting for better member attendance.

ON A ROLL CALL VOTE:

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

Nays: None.

Absent: Mr. Jocuns.

Abstain: None.

MOTION CARRIED.

TRAINING REPORT

There was no training reported and Ms. Habben stated the members are in good standing for meeting the training hours required.

ADJOURNMENT

There being no further business, it was moved by Mr. Cattane to adjourn the meeting at 8:15 p.m. **MEETING ADJOURNED.**

Mr. Paul Parsch, Secretary