

**CITY OF LAPEER
MINUTES OF A REGULAR
ZONING BOARD OF APPEALS MEETING
FEBRUARY 28, 2022**

A regular meeting of the City of Lapeer Zoning Board of Appeals was held at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan on Monday, February 28, 2022 at 6:30 p.m.

Members Present: Chairman Jeff Hogan, Vice Chairperson Catherine Bostick-Tullis, Eric Cattane, Dan Farrington, Paul Parsch and Lynne McCarthy.

Members Absent: Patricia Waugh.

Also Present: Caitlyn Habben, Rowe Professional Services Company Planning Consultant, and Kimberly Hodge, Recording Secretary.

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

MINUTES

036 2022 2-28 MINUTES

Moved by Bostick-Tullius. Seconded by Cattane.

To approve the minutes of the regular meeting held on January 24, 2022 as presented.

Yeas: Hogan, Bostick-Tullius, Cattane, Farrington, Parsch and McCarthy.

Nays: None.

Absent: Waugh.

MOTION CARRIED.

PUBLIC COMMENTS

There were no public comments at this time.

PUBLIC HEARING SCHEDULED

There were no public hearings scheduled.

OTHER BUSINESS

Lapeer Associates – 795-813 East St. – Parking Administrative Decision Appeal

Habben reviewed the request from Lapeer Associates, LLC on which action was postponed at the November 2021 meeting to appeal the administrative determination for conditional approval of a Zoning Permit for a nail salon to locate at 799 East Street which limits the number of chairs due to available parking spaces stating the applicant is requesting to use the neighboring Lapeer Pointe Plaza parking spaces as included in the number of total parking spaces allowed when considering zoning ordinance compliance. Habben reported the two components to the appeal include:

- Appeal of the total properties considered was done improperly not taking into account a recorded Reciprocal Easement Agreement between the property owners of the Lapeer Associates, Aldi and Lapeer Pointe Plaza properties; and
- Appeal of the misinterpretation of verification of parking for a change in use or change in tenant.

Habben reviewed aerial photos of the three parcels involved in the request, the review and parking calculation process when considering approval of a Zoning Permit and the parking calculation for the Zoning Permit for the nail salon to locate at 799 East Street with the condition of limiting the number of customer chairs to 6 due to the availability of parking spaces in the Lapeer Associates plaza.

Habben also reviewed the general best practice questions when considering an administrative decision appeal which include:

1. Was the Zoning Administrator's action arbitrary or capricious?
2. Was the Zoning Administrator's action an erroneous finding of a material fact?
3. Was the Zoning Administrator's action an abuse of discretion?
4. Was the Zoning Administrator's action based on an erroneous interpretation of the Zoning Ordinance?

Habben reported that the City has acknowledged the Lapeer Associates parcel owner Mike McGlothin and Charles Laurencelle owner of the Lapeer Point Plaza parcel do not agree on interpretation of the Reciprocal Easement Agreement (REA) and have recommended the parties obtain a court-issued consent judgement.

Discussion was held on parking on the Aldi site, the Zoning Permit's limitation of customer chairs and the applicant's decision not to proceed with the November 2020 parking variance request.

Mike McGlothin provided a history of the site's development, cited certain sections of the various REA's from 1985, 1992 and 2016 and stated he currently has 3 vacant units which are not occupiable.

Dennis McGlothin distributed copies of the easement language, provided a timeline of the site's development and various REAs and stated the owners only sold to ALDI due to agreement to share parking, that the property physically appears as one center and that the M-24 overlay district encourages shared access. McGlothin stated all spaces on the 3 parcels should be counted together, that the parking lot and building façades have been improved, that their business has brought in revenue and employees workers and that 40% of the space is now unleaseable.

Tim Denney, the applicant's attorney, reviewed legal authority granted to the ZBA per the zoning ordinance and State of Michigan to consider the appeal, the ordinance definition of property owner, language in the various REAs and the text from Mr. Laurencelle to Mike McGlothin offering to purchase the Lapeer Associates parcel. Denney stated the City should continue to interpret the REA to count all parking spaces on the three sites together as part of the parking calculation.

Mike McGlothin further stated that today at 6 p.m. there were hundreds of vacant parking spaces on the parcels, that the lots are never full, that the City's calculation process is basically a taking of his property by rendering a portion of his space useless and unoccupiable.

Jordan Segal, attorney for Laurencelle Properties, stated the applicant is relying on historical documents that the 2016 REA renders obsolete, that the idea was never to allow each party to claim all parking spaces on the parcels for themselves, reviewed his interpretation of various language in the 2016 REA and that if there is a dispute between the two parties on the interpretation of the REA it should not be decided by the Zoning Board of Appeals. Segal further stated Mr. Laurencelle sent a letter in 2016 to the City on his position that the spaces on the 3 parcels should not be counted all together, that Mike McGlothlin ignored the warning from the City time and time again, that if McGlothlin puts in another high demand use it would use up all available parking on the 3 parcels and requested the City adhere to the current parking calculation determination and deny the appeal.

Charles Laurencelle of Laurencelle Properties, owner of the Lapeer Pointe Plaza parcel, stated it's not his position that there shouldn't be shared access between the parcels just that the parcels should not be used together for tenant space parking calculations.

Board member discussion was held on the two parts of the appeal, the fact there is not a mutual agreed upon REA which is being disputed by the parties, the recommendation from the City for the applicants to obtain a consent judgement from the court, the current ordinance language, various language in the 1985, 1992, 1993 and 2016 REAs and the City Planning Consultant's interpretation of the Zoning Ordinance and REA. Discussion was also held on the ZBA's lack of authority to interpret the disputed agreement, improvements to the three developments, the ability of Lapeer Associates to request a parking space variance, use of the rear parking available on the east side of the Lapeer Associates building and parking on the site by Apple Tree and EG Nick's employees and customers.

037 2022 2-28 Denial of Lapeer Associates Administrative Decision Appeal

Moved by Farrington. Seconded by Cattane.

Part 1 – Inclusion of Neighboring Properties in Parking Calculation

To deny the administrative determination appeal regarding the Zoning Permit for 799 East Street by Lapeer Associates LLC in the determination of the total number of parking spaces available to the property because the zoning administrator did not act in an arbitrary or capricious manner, was not an erroneous finding of a material fact, abuse of discretion, or based on erroneous interpretation of the zoning ordinance.

Part 2 Change in Occupant/Change in Use Compliance

To deny the administrative determination appeal regarding the Zoning Permit for 799 East Street by Lapeer Associates LLC that a Zoning Permit was required to verify the number of off-street parking spaces because the zoning administrator did not act in an arbitrary or capricious manner, was not an erroneous finding of a material fact, abuse of discretion, or based on erroneous interpretation of the zoning ordinance.

ROLL CALL VOTE:

Yeas: Farrington, Cattane, Bostick-Tullius, Hogan, Parsch and McCarthy.

Nays: None.

Absent: Waugh.

MOTION CARRIED.

TRAINING REPORT

Discussion was held on the recent ZBA joint meeting held with members of the City Commission, Planning Commission and Downtown Development Authority including the need to provide more opportunities for the public to comment, holding the meeting twice per year and having the meeting follow more of a workshop format.

ADJOURNMENT

There being no further business, it was moved by Bostick-Tullius to adjourn the meeting at 8:04 p.m. **MEETING ADJOURNED.**

Eric Cattane, Secretary

Kimberly Hodge, Recording Secretary