

**CITY OF LAPEER  
MINUTES OF A REGULAR  
ZONING BOARD OF APPEALS MEETING  
OCTOBER 24, 2016**

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, October 24, 2016 at 7:00 p.m.

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

**Members Absent:** Chairman Joe Black and Mr. Wes Butterfield.

**Also Present:** Mr. Scott Kree, Rowe Professional Services Company Planning Consultant.

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

**MINUTES**

It was moved by Mr. Parsch and supported by Mr. Bennett to approve the minutes of the meeting held on September 26, 2016 as presented. **MOTION CARRIED.**

**PUBLIC COMMENTS**

There were no public comments

**PUBLIC HEARING SCHEDULED**

**Lapeer Fuel Ventures (Clark) – 252 S. Main Street – Monument Sign**

Mr. Kree reported Lapeer Fuel Ventures has withdrawn their current variance application and will be resubmitting a new request for the November meeting.

**Prime 1 Properties (ZeerCO) – SW Corner S. Main/Baldwin Rd. – Multiple Variances**

Mr. Kree reviewed the request from Mike Zeer of Prime 1 Properties, LLC for multiple variances in order to construct a new commercial development, formerly referred to as the ZeerCO commercial project, consisting of two buildings, one with a drive-thru, at the southwest corner of S. Main Street and Baldwin Road which includes combining the three existing parcels known as 858 S. Main, 864 S. Main and 885 Baldwin. Mr. Kree stated the project received preliminary site plan approval from the Planning Commission in February 2016 and that the Planning Commission recommended the City Commission rezone the 885 Baldwin Road parcel from R-2 Single Family Residential to B-2 General Business which is consistent with the Master Plan on October 20, 2016. Mr. Kree reviewed the site location, the existing zoning and Master Plan designations of the subject site and surrounding properties and stated the project will be proceeding with the site plan review process which will require approval of a Special Land Use for the drive-thru and that any future changes may necessitate the applicant coming back before the ZBA board.

Mr. Kree reviewed the proposed site plan design and stated the project currently requires eleven (11) variances to various sections of the City Zoning Ordinance.

**Items #1 & #2**

A variance of 19 spaces to the off-street parking requirements of Section 7.16.02, Table 7.16.1. and a variance of 2 spaces to the drive-thru stacking space requirements of Section 7.16.07(a)

Mr. Kree stated based on the current proposed site plan design 61 parking spaces are required, 42 parking spaces are provided, 8 drive-thru stacking spaces are required and 6 stacking are provided. Mr. Kree reported the 61 parking space requirement includes employee parking for both buildings.

Discussion was held regarding the parking locations, traffic circulation and access drive locations on the proposed site and the basis of calculating the parking requirement.

Mr. Zeer, of Prime 1 Properties, was present and stated the proposed occupant of the drive-thru building, Tropical Smoothie, has a low amount of indoor seating and has indicated the maximum number of vehicles stacked in their drive-thru is between 3 and 5 vehicles.

Vice Chairman Jocuns opened the public hearing on items #1 & #2 at 7:26 p.m.

Ms. Doreen Starr, 888 Baldwin Road, requested clarification on the orientation of the proposed site plan.

There being no further comments, the public hearing was closed at 7:27 p.m.

Discussion was held regarding the overall parking design and traffic circulation on the site, location of the access drive across from West Street, the possibility of having one large user on the site, attempts by the applicant to contact the owner of the residential property to the south and the fact the applicant may need to come back before the ZBA board if there are any changes to the site plan or in the event additional information is needed.

It was moved by Mr. Bennett to postpone action on the entire request. After discussion, Mr. Bennett withdrew his motion.

Mr. Zeer stated the Police and Fire departments prefer the design with open space between the two buildings, that the three front yards create a hardship on developing the site, that the existing structures on the site are old and tired and that he will make the property look nice.

Discussion was held regarding the need for more information on the traffic flow on site, updated parking locations and loading/unloading areas provided on the site.

It was moved by Mr. Parsch and supported by Mr. Hogan to postpone action on variance items #1 and #2. **MOTION CARRIED.**

**Item #3 & #4**

Variances to Section 7.16.04(d) to allow parking and loading/unloading spaces in the setback of the right-of-way for S. Main Street and Baldwin Road and to Section 7.16.06 to allow no screening of loading/unloading spaces

Mr. Kree reviewed the location of parking and maneuvering lanes and designation of the loading/unloading spaces for the building on the east side of the site.

Discussion was held regarding normal delivery times.

Vice Chairman Jocuns opened the public hearing on items #3 & #4 at 7:55 p.m.

There being no comments the public hearing was closed.

After discussion regarding the location and lack of screening of the loading/unloading spaces it was moved by Mr. Bennett and supported by Mr. Hogan to approve variances from the loading and unloading requirements of Section 7.16.04(d) and Section 7.06.06 as they relate to the following standards:

- (1) The standard for which the variance is being granted would render conformity unnecessarily burdensome by not allowing loading/unloading spaces in areas as presented and most beneficial to the site; and
- (2) The variance would do substantial justice to the applicant as well as to other property owners in the Commercial 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 issue with the loading/unloading spaces is due to circumstances unique to the property and not to general conditions in the area. The loading/unloading area is located in the front yard and not screened due to multiple front yard setbacks. The lack of space on the site and to have the spaces positioned away from the residential use to the south has placed the loading/unloading spaces as shown; and
- (4) The problem that resulted in the need for the variance was not created by the applicant or previous owners of the property but rather the property shape, zoning and location; and
- (5) Issuance of the variances particular to loading and unloading would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done.

**MOTION CARRIED.**

**Items #5, #8 & #9**

Variances to landscaping requirements of Section 7.06.03 Table 7.06.2 to allow parking in the 10 foot setback and to the parking lot landscaping requirements of Section 7.15.02(e)&(g)

Mr. Kree reviewed the areas on the site where parking is located within the landscape buffer area and the greenbelt areas.

Mr. Zeer stated a 3 ft. high masonry wall is proposed along portions of the Baldwin Road frontage and that he is open to working with the owner of the property to the south on what landscaping to place along the south property line abutting the residential use.

Discussion was held regarding the landscaping planting areas on the site, the proposed shrubs along the west border of the site and the location of proposed canopy trees on the site. Mr. Kree reported the current site plan requires 4 parking lot canopy trees, 17 greenbelt canopy trees and 102 shrubs, that 2 parking lot canopy trees, 1 greenbelt canopy tree and 35 shrubs are shown on the plan resulting in variances of 2 parking lot canopy trees, 16 greenbelt canopy trees and 67 shrubs being required.

Vice Chairman Jocuns opened the public hearing on items #5, #8 & #9 at 8:15 p.m.

Ms. Doreen Star, 888 Baldwin, stated the Harrison Street traffic leaving the Meijer site and turning right to head south does not stop.

Mr. Ken Dick, 1777 A Street, stated he owns the Dairy Queen at 888 S. Main Street and that if the businesses are successful there will be traffic flow issues on the site at busy times.

There being no further comments, the public hearing was closed at 8:19 p.m.

Discussion was held regarding the lack of room for additional shrubs on the site and the fact developing the property is challenging.

After discussion, it was moved by Mr. Hogan and supported by Mr. Parsch to approve a variance to Section 7.06.03 Table 7.06.2 to allow parking in the 10 foot landscape setback, a variance of 4 parking lot canopy trees to Section 7.15.02(g) and a variance of 16 greenbelt canopy trees and 67 shrubs to Section 7.15.02(e) as they relate to the following standards:

- (1) The standard for which the variance is being granted would render conformity unnecessarily burdensome due to parking requirements, space available and the use of trees within the development creating safety issues along with impediments for such plant materials to grow properly; and
- (2) The variance would do substantial justice to the applicant as well as to other property owners in the commercial zoning district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others as with most commercial operations the need to have the business be seen and to provide safety on the site from both a traffic and crime hindrance if such regulations were enforced; and
- (3) The problem is due to circumstances unique to the property and is not the general conditions in the area given the location of the project encompassing three pieces of property and still not having enough space for parking or trees and having three front yards that abut major right-of-ways; and

- (4) The problem that resulted in the need for the variance was not created by the applicant or previous owners of the property but rather by the property itself as it pertains to shape, size, and location; and
- (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done with less landscaping being required on site.

**MOTION CARRIED.**

**Items #6 & #7**

Variances to Section 7.15.06 and 7.15.02(g) to allow the location of the waste receptacle/dumpster screens within the front yard and within a rear yard setback of less than 10 feet for both proposed structures

Mr. Kree reviewed the location of the two waste receptacle/dumpster screens on the site. Discussion was held regarding the traffic flow for garbage trucks on the site.

Vice Chairman Jocuns opened the public hearing on items #6 & #7 at 8:27 p.m.

There being no comments, the public hearing was closed.

It was moved by Mr. Bennett and supported by Mr. Hogan to approve variances to Section 7.15.06 and 7.15.02(g) to allow waste receptacle/dumpster screens within the front yard and within a rear setback of less than 10 feet for both proposed structures as they relate to the following standards:

- (1) The standard for which the variance is being granted would unreasonably prevent the owner from using the property as a commercial use and there is limited area for waste receptacle locations; 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 as it has been shown the applicant has provided what seems to be the best and most logical placement of the dumpsters; and
- (3) The problem is the project has three front yards and these circumstances are unique to the property and not 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, rather the size, shape and location of the development and its needs for waste receptacle areas; and
- (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done as it is seen that this a safe and logical design for the site and the locations of the dumpster screens.

**MOTION CARRIED.**

**Item #10**

A variance to the landscape buffer requirements of Section 7.15.02(f) between residential and commercial uses

Mr. Kree reviewed the buffering requirements along the 145 feet of property line between the commercial and residential uses.

Mr. Zeer stated planting tree and shrub greenery between the site and the residential use to the south would be nicer than a wall.

Discussion was held regarding the canopy trees proposed on the site, the possibility of placing additional canopy trees on the site, the potential for canopy tree root growth to encroach into the drive-thru area passing lane, the fact the area to the south is planned for commercial development, the shrubs to be planted along the west property line along Baldwin Road and the number and type of shrubs necessary to screen the property line abutting the residential use.

Vice Chairman Jocuns opened the public hearing on item #10 at 8:33 p.m.

There being no comments, the public hearing was closed.

After discussion, it was moved by Mr. Parsch and supported by Mr. Hogan to approve a variance to the landscape buffering requirements of 7.15.02(f) in lieu of the 20 foot wide buffer area with a 6 foot wall or 4 foot berm with 5 canopy and evergreen trees **to require a minimum of forty (40) five (5) foot high shrubs or enough to cover the length of the south property line abutting the existing residential use** as they relate to the following standards:

- (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 due to limited space for use on the development properties to meet other requirements; 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 being that the residential property adjacent to this development is master planned to be commercial; and
- (3) The problem is due to circumstances unique to the property due to area and layout of these commercial uses; 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 if the property to the north had not been rezoned a buffer would have been required for two smaller lots that front Main Street; and
- (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done, due to allowing for less obstructions on the site in this area.

**MOTION CARRIED.**

**Item #11**

Variance to Section 7.13.04(b)(8) to allow a menu board, drive-thru window and speaker box to face a public right-of-way or residential property

Mr. Kree reviewed the location of the speaker box and drive-thru window and the anticipated location of a menu board which will face a residential area and the Baldwin Road right-of-way.

Discussion was held regarding the landscape areas along Baldwin Road and the south property line.

Vice Chairman Jocuns opened the public hearing at 8:52 p.m.

Ms. Charlene Miles, 906 Baldwin Road, was present and questioned how well the screening shrubs will buffer the drive-thru noise and stated she currently hears the Dairy Queen drive-thru noise.

Ms. Doreen Starr, 888 Baldwin Road, stated she and her husband had to water the arborvitae trees Meijer planted to keep them from dying so the developer should think about what type of landscaping is being planted.

There being no further comments, the public hearing was closed at 8:57 p.m.

Discussion was held regarding sound levels, requiring the sound level be lowered during evening hours, the fact Tropical Smoothie closes early and the increased traffic expected in the area to be generated by the development.

After discussion, it was moved by Mr. Hogan and supported by Mr. Bennett to approve a variance from the drive-thru requirements of Section 7.13.04(b)(8) to allow the menu board, drive-thru window and speaker to face a public right-of-way or residential property as it relates to the following standards:

- (1) The standard for which the variance is being granted would render conformity unnecessarily burdensome because the property is surrounded by 3 right-of-ways and next to residential property that is to be rezoned commercial per the Future Land Use plan; and
- (2) The variance would do substantial justice to the applicant as well as to other property owners in the surrounding zoning districts because if the area was rearranged traffic issues could disrupt travel in the area, thus the design seems most logical with justice to others; and
- (3) The drive-thru location and the connected features of a drive-thru is located as such 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 but was caused by the property and safe areas for access on to the site; and

- (5) Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done due to the logical location of the drive-thru area and the operations necessary for that use to function.

**MOTION CARRIED.**

Further discussion was held regarding the parking, access and traffic circulation on the site.

**ADJOURNMENT**

There being no further business, it was moved by Mr. Bennett to adjourn the meeting at 9:03 p.m. **MEETING ADJOURNED.**

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Mr. Joe Black  
Chairman