

**MINUTES OF THE COOPER CHARTER TOWNSHIP  
PLANNING COMMISSION HELD ON TUESDAY, APRIL 12, 2016**

A meeting of the Planning Commission of Cooper Charter Township was held on Tuesday, April 12, 2016, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Asselmeier, Boekhoven, Corke, Frederick, Janssen, Reynolds, Stehouwer.

Members Absent:

Also Present: Michael Homier of Foster, Swift, Collins & Smith, attorneys for Cooper Charter Township; Russ Wicklund, Township Planning Consultant; Dan Burns, attorney for William and Jacqueline Moran; Applicant William Moran.

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

Agenda Item

A motion to accept the Agenda as printed was made by Comm. Stehouwer and supported by Comm. Boekhoven. Motion carried 7-0.

Review and Approval of Minutes

A motion to approve the Minutes of the February 9, 2016, meeting was made by Comm. Frederick, supported by Comm. Corke. Motion carried 7-0.

Citizen Comment

None.

Request for a Site Plan Review of 9489 Douglas Ave.

Dan Burns, the attorney for William and Jacqueline Moran, stated the Morans switched from a specialty ceramics and general retail store to a full general store, which they operated for many years. They have attempted to lease some of the retail space over the years, but haven't been able to do so until recently. The retail use would be for a liquor store, which would sell beer and wine. They have yet to obtain approval through Liquor Control. They must have the Township's approval before proceeding.

In 2007, the ZBA made a finding that even though the Applicants had made a few repairs, the Code Enforcement Officer considered it an expansion of their prior use and they would have to bring the building into conformity. There are a number of legal, non-conforming, pre-existing aspects to the property and until the retail use ceases or the footprint of the building expands or is enlarged, those non-conforming aspects of the property should not have to be brought into compliance. With the current situation, there is no physical change. The question appears to be, is the change from general store to liquor store an actionable expansion of the prior use. The ZBA determined that unless a time came when the retail store did expand or, in particular, if they added any additional signage, that would require a new site plan. The Applicants are not

requesting any new or additional signage. The issues identified by the Engineer's Report are the same issues that existed in 2006-2007. It is the Applicants' belief that they don't have to bring these issues up to code yet because they have retained their use, they have just switched from one type of retail to another type of retail. They would like the Planning Commission to follow what the ZBA did in 2007 and find that a site plan is not required. They don't think they should have to bring the site in compliance for using their non-conforming legal aspects of the building.

Chairman Asselmeier then asked the Commissioners if they had any questions for Mr. Burns.

Comm. Frederick stated that he is familiar with the property and didn't think there had been any business run out of that location for quite some time. Mr. Burns stated that there had been interested lessees, but none of them came to fruition. Comm. Frederick stated he remembered the concerns raised back in 2007, which included engineering concerns about the appearance of a door which was not on the site plan. Mr. Burns stated that the door had always been there but had been boarded up. Comm. Frederick's concern then and now was whether the site was ever inspected by a licensed person. Applicant Moran stated that reopening the door was not considered an alteration because all they did was reopen and replace the door. Mr. Burns also stated that when any items were fixed on the building, they would consult the Township and the Supervisor to see if any permits were needed. Mr. Burns stated that their main concern is the length of time it is taking to get approval so that they can lease the space.

Comm. Stehouwer asked if the space is being used today. Mr. Moran stated that he has had at least four potential tenants, but for whatever reason they back out before the lease is signed. The current gentleman interested in the space has four other stores in and around Kalamazoo and he spent over one year going through the State Liquor Control Commission to get the permit. It has now been at least 8 months since the Township received a letter from the State and the Township immediately said "no". Mr. Moran claims that he can't make improvements the Township wants without the rental income.

Comm. Reynolds confirmed with Mr. Moran that there hasn't been a viable business at that location for a number of years. Comm. Reynolds also stated he wanted to see a site plan because of safety issues like parking, security, etc., because a liquor operation requires special provisions for the sale of liquor.

Comm. Corke stated the lighting issue needs to be addressed, with residents living across the road. He also questioned the viability of this liquor store giving the fact that there are other stores located within 1 ½ miles – 4 miles.

Russ Wicklund talked about the procedures the Township followed when this matter first came up. He stated that in 2007 the Applicant agreed to dismiss litigation related to some of the same characteristics. He stated the issue primarily is that when the Township has any commercial business with a non-conforming situation, and in this case in particular, the Township does not have an approved site plan. Without an approved site plan, the Township does not have the ability to review or approve anything administratively because it is all based upon changes to an approved site plan. When the Township looks at this issue, particularly with non-conformity, the non-conformity may continue in a lot of different situations, but where it becomes an issue is

when there is an approval required to do something different. In this particular case, the approval that was required was through Liquor Control – that this site was a site that could be utilized for a liquor store. At that point, the Township looked at that as being a change of use; a change of condition. The provisions in the ordinance that deal with change of use are specific; that it is based upon an approved detailed site plan. Once retail is in and there is an approved site plan, some other retail comes in, leases this, moves out, leases this like what occurs in shopping centers, at that point the Township typically only look administratively at whether or not it's going to impact parking. The approval of a liquor license by the Township is what has created this situation for the Planning Commission to do its review. The Planning Commission cannot approve something that isn't per the Township's ordinance requiring site plan. It was agreed between Mr. Burns and Mr. Wicklund that a site plan was required. Mr. Burns submitted for site plan review but he also requested an interpretation. That interpretation per Mr. Wicklund's reading was that site plan review was not required; there was no change of use. It was then sent to the ZBA for interpretation. The ZBA looked at the issue of special use of the apartment and they determined that at that point no special use would be required for the apartment. There was no problem with the issue of the apartment continuing as a legal non-conforming because it had no special use approval. The ZBA tabled action because the Applicant indicated that they would comply with site plan review. Site plan review compliance for the ordinance is a checklist. The Planning Commission, in reviewing the application, can look at whether or not some of the checklist items would not be required. In most of those cases, it is when a site plan is being amended and there may be a minor change that can be resolved. In this case, there are a tremendous number of non-conformities, including a liquor store which would have different hours of operation than a regular retail store, lighting issues, potential for screening issues and is surrounded by residential property. At this time, the Planning Commission only has the original site plan from 2006-2007, which was never formally approved. Items that are needed include: (1) a survey, including a topo map; (2) an easement for access to the property; (3) a commercial driveway; (4) relocation of parking; (5) floor plan to determine what the liquor store is going take up in terms of retail, which will ultimately affect parking space requirements; and (6) stormwater issues due to parking and paving of the lot.

Attorney Homier pointed out that the proposed use of the property is a conforming use. It is zoned commercial. It is the elements of the site that are non-conforming as it may relate to the commercial use in that district (i.e. is there enough parking, is there a topography map, does the lighting comply, should the parking lot be paved as required). There are different standards that apply to different commercial uses in that class. It is up to the Planning Commission to determine whether or not this is a sufficient change in use to require those elements be also conforming to the use. The Planning Commission needs to decide if there are certain elements that can become more conforming to allow site plan review to move forward. Based on Prein & Newhof's review, there are certain elements of site plan review that have not been met in terms of the process itself.

None of the Commissioners had any questions for Mr. Wicklund or Mr. Homier at this time.

Mr. Moran stated that his building is zoned 201 Commercial, which zoning includes packaged liquor. He also stated he gave the Township a survey in 2008. He said he is not going to put up big spotlights; he doesn't plan on changing any of the lighting that isn't already there. It was Mr.

Burns' contention that as long as the footprint of the building is not expanded, it doesn't make any difference what type of retail business goes in. Next followed a lengthy discussion between Mr. Burns and Mr. Homier regarding items which the Township feels needs to be addressed, but which Mr. Burns and Mr. Moran feel are unnecessary since the building is not being expanded.

Chairman Asselmeier then asked how the Commissioner would like to proceed. Comm. Frederick stated he does not agree with baseline information being the same as a site plan. He feels more information is necessary. He would like to see a site plan.

Comm. Stehouwer stated that just because a type of business is in a particular zoning district doesn't mean they can't ask for more information, especially when the type of retail is a change and affects how the Planning Commission thinks.

Comm. Reynolds stated he thinks it is appropriate to have a site plan.

Comm. Corke wants a site plan.

Comm. Jenssen would also like a site plan.

Mr. Wicklund stated that all the items they need should be on a site plan. The checklist needs to be followed.

Comm. Boekhoven stated that without a site plan, this is going nowhere.

Mr. Burns stated that before a final determination is made, they would like the opportunity to go before the ZBA for a redetermination so that it would provide a basis for them to know whether a full site plan is required. Mr. Burns stated that at the last ZBA meeting, he did not concede that a site plan was required. Mr. Homier confirmed with Mr. Burns that Mr. Burns wants to go back to the ZBA and have them interpret the language of the ordinance to determine whether a site plan is necessary. Mr. Burns stated he wants an interpretation of the non-conforming use portion of the ordinance.

Chairman Asselmeier asked what options were available to the Planning Commission. Mr. Homier said they have the following options: (1) request the site plan be submitted pursuant to site plan review; (2) request the site plan be submitted and send it back to the ZBA for a determination of whether or not site plan review is required so that the Applicant has notice that this matter is going to be tabled until such time as (a) the ZBA determines whether or not site plan review is required or (b) they submit an actual site plan if the ZBA determines that one is required. Mr. Burns said he would prefer it be referred back to the ZBA so the ZBA can determine whether a site plan is required.

Mr. Moran wanted to know what happened to the original site plan submitted in 2006/2007. Mr. Wicklund stated that there was no approved site plan. Mr. Burns agreed there was no approved site plan; however, there was an "imperfect" site plan submitted back in 2006.

There was a discussion about whether the Applicant should have to pay for another meeting. Comm. Boekhoven did not think the Applicants should have to pay for another meeting; however, Comm. Frederick stated that he didn't think the citizens should have to pay for another meeting just because the Applicants didn't provide what they needed in order for the Planning Commission to make a determination tonight.

A motion to table the application and request the ZBA to determine whether a site plan is required by the zoning ordinance and, if required, the applicant shall submit a site plan for review pursuant to the requirements of the zoning ordinance was made by Comm. Stehouwer and supported by Comm. Corke. A roll call vote was taken. The vote was unanimous to approve the motion.

New Business

None.

Old Business

Mr. Wicklund stated they are working on moving inventory information (maps, informational material) into a book without necessarily going down the path to do a master plan update.

Adjournment

A motion to adjourn the meeting was made by Comm. Boekhoven, supported by Comm. Janssen. Motion carried 7-0.

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