

MINUTES OF THE COOPER CHARTER TOWNSHIP
PLANNING COMMISSION HELD ON TUESDAY, JANUARY 10, 2017

A meeting of the Planning Commission of Cooper Charter Township was held on Tuesday, January 10, 2017, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

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

Members Absent: None.

Also Present: Michael Homier of Foster, Swift, Collins & Smith, attorneys for Cooper Charter Township; Russ Wicklund, Township Planning Consultant; Applicant, Bernard Deaton, from H. J. Deaton & Son, Inc.; Applicant, William Moran and Attorney Dan Burns, on behalf of William Moran.

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

Agenda Item

Chairman Asselmeier stated that the Agenda should be amended to include election of officers. A motion to accept the Agenda, as amended, was made by Comm. Reynolds and supported by Comm. Boekhoven. Motion carried 7-0-0.

Election of Officers

A motion to nominate and elect Comm. Asselmeier as Chairman of the Planning Commission was made by Comm. Reynolds and supported by Comm. Corke. Motion carried 7-0-0.

A motion to nominate and elect Comm. Boekhoven as Vice Chairman of the Planning Commission was made by Comm. Stehouwer and supported by Comm. Corke. Motion carried 7-0-0.

A motion to nominate and elect Comm. Reynolds as Secretary of the Planning Commission was made by Comm. Frederick and supported by Comm. Corke. Motion carried 7-0-0.

Review and Approval of Minutes

A motion to approve the Minutes of the December 13, 2016, Planning Commission meeting was made by Comm. Reynolds, supported by Comm. Bricker. Motion carried 7-0-0.

Citizen Comment

No citizen comments.

Special Exception Use Permit for Bernard J. Deaton/H.J. Deaton & Son, Inc., 7987 Douglas Avenue, Kalamazoo, Michigan, Parcel No. 39-02-20-232-070; Request for accessory use for parking for their trucking company.

Mr. Deaton appeared on behalf of H. J. Deaton & Son, Inc. He stated that they purchased the adjoining lot, demolished the residence that was on that lot, and now would like to use the lot for additional parking for the trucking company.

Russ Wicklund, Township Planner, stated that Tom Wheat, Township Engineer, prepared a review and noted the following issues: commercial driveway and stormwater.

Mr. Deaton indicated that the location of the driveway and the standards were to meet Road Commission standards for approval of that driveway. Stormwater has been coordinated on the adjoining storage unit property. Mr. Deaton explained what the Road Commission is requiring and how they are addressing stormwater runoff. Mr. Wicklund recommended that any approval should be conditioned upon a formal easement for stormwater be established.

Comm. Stehouwer had some questions about the Central Business District (CBD) and C-2 special exception uses. He wanted to make sure that the special exception use requested is compatible with the area. Mr. Wicklund commented that was taken into account when the CBD was created. Comm. Stehouwer stated that he felt some type of landscaping is necessary to blend this property into the CBD.

Comm. Boekhoven stated he didn't see the need to require any additional landscaping. Comms. Reynolds and Frederick stated they would like to see some additional landscaping on either side of the driveway, outside of the right-of-way.

Comm. Stehouwer asked the applicant if the need for additional parking is to accommodate their current trucks or whether they intended to increase their business. The Applicant stated it was needed to accommodate their existing trucks.

Open Public Hearing

A motion to open the public hearing was made by Comm. Corke, supported by Comm. Stehouwer. Motion carried 7-0-0.

No public comments were made.

Close Public Hearing

A motion to close the public hearing was made by Comm. Corke, supported by Comm. Frederick. Motion carried 7-0-0.

A motion was made by Comm. Corke to approve the special use exception expansion conditioned on obtaining a stormwater easement within 60 days of approval that includes an acknowledgment of accepting stormwater from the road right of way and further conditioned on installation of landscaping on each side of the entryway outside of the road right-of-way; the easement and landscaping plan to be administratively approved by the Township Planner The motion was supported by Comm. Stehouwer. Motion carried 7-0-0.

Site Plan Review for William Moran, 9489 Douglas Avenue; Parcel No. 3902-08-426-016.

A motion to place the Moran Site Plan Review back on the table was made by Comm. Frederick, supported by Comm. Stehouwer. Motion carried 7-0-0.

Mr. Burns, attorney for William and Jacqueline Moran, passed out revised plans to the Commissioners indicating the new plans contained a few updates, which he doesn't believe are material. One update is that the gravel surface is not intended to be changed. He stated there was also some discussion as to whether it was a 66 foot or 100 foot right-of-way, so both were put on the plans. Mr. Burns stated he does not believe the updates should change the Planning Commission's view of the entire project and the original plans as submitted comply with the site plan requirements.

Mr. Burns stated that in researching this matter, he found the Minutes from the July 31, 2007 ZBA meeting in which they unanimously found that no site plan was required and that no special exception use permit application was required based on the fact that there were no structural changes or expansion of the property. He still believes that is the case today. There is no structural expansion of the property. It is a change from general retail to sale of a specific item, the regulated item of alcohol, and they are working with the Liquor Control Commission to have approval. He wants to reconfirm, as in 2007, they are submitting this plan because they want to give the Planning Commission a baseline and have drawings that let the Planning Commission know what is going on at the site. Mr. Burns claims now that his client does not believe site plan review is necessary as there has been no change in the use or the footprint or the building itself despite the fact that the use of building is changing. Mr. Burns stated there has been no replacement of the building or repairs that cause a substantive change. They are submitting this document to make sure that, as he believes was represented to them, if they had any changes to the business, they would submit a site plan for review and approval. Mr. Burns stated the non-conforming aspects of their site continues to be acceptable and they should not and do not require compliance with the ordinance in making it conforming. Examples of the non-conforming site are the gravel surface and parking spaces along the road side of the building. Even though this commercial building is a very large building to be put on such a small parcel, it has operated as a ceramics school and general merchandise store and now is planning on being a retail liquor sales store. Mr. Burns stated traffic should be in and out quickly. The parking should not be overloaded. They will continue to use their existing entryway. They just want the Planning Commission to have the information they need; however, as far as what the Planning Commission would like, i.e. a site plan that meets engineering specs, they just want the Planning Commission to have a baseline for what is happening, so the Planning Commission can tell in the future whether a change has been substantial enough to require the site to come up to code.

Chairman Asselmeier thanked Mr. Burns for his comments and indicated he would let the Township Engineer comment on the site plan.

Mr. Burns requested a copy of the engineer's letter from December. Mr. Wicklund stated Mr. Burns received a copy of that letter. Mr. Burns then started to quote from the minutes of the July 31, 2007 ZBA meeting.

Attorney Homier asked Mr. Burns what relevance those Minutes have to what is taking place now. Mr. Burns stated that it shows that nothing has changed. Attorney Homier pointed out that they have been over this in a past meeting. Mr. Burns stated that he did not have that document in a past meeting. Attorney Homier stated that these documents have never been submitted to the Planning Commission as part of this application. Mr. Burns claimed that this was not a submission; it was a township document. Attorney Homier pointed out that the document is not part of the record in this case. Mr. Burns stated that it is now. Attorney Homier stated it is not. Mr. Homier reminded Mr. Burns that he was provided an opportunity to submit documents in support of the application and that the applicant would not be permitted to submit documents after a certain date. Mr. Burns acknowledged that deadline. Attorney Homier will let the Planning Commission decide whether it wants to accept the revised site plan or any other documents at such a late date.

Mr. Burns duly noted Attorney Homier's comments but then stated he wanted to continue with his record to state that these documents are not additions to the record; they are the Township's public records.

Mr. Wicklund pointed out that there has been input from the Township Engineer for the third time regarding these issues. Of the most recent checklist items, there are still five important items that have not been addressed. The issue to which Mr. Burns was referencing is from a 2007 ZBA decision that has since been reviewed again on application to the ZBA on June 30, 2016, at which the ZBA determined that a variance request was denied and formal site plan review was required. That is why it is back before the Planning Commission, and which initiated the three reviews by the Township Engineer as to needing to meet checklist items. The Planning Commission still does not have a site plan that meets those requirements.

Chairman Asselmeier confirmed with Mr. Wicklund that the most recent site plan submitted by the Morans for this meeting still does not meet the requirements of the checklist.

Mr. Wicklund said he has not reviewed the revised plans submitted tonight. The site plan and any supplemental documents were to be submitted in advance for the Township Engineer to review. That was not done.

Mr. Burns then stated that his client is prepared to use the documents that were previously submitted and not the revised plans submitted tonight.

Mr. Wicklund stated that the previously submitted documents do not meet the ordinance requirements for site plan review for the third time.

Chairman Asselmeier told Mr. Burns that the Planning Commission previously provided him with a checklist of items that needed to be met on the site plans and to date they have not received a site plan that is complete and do not meet the checklist requirements.

Chairman Asselmeier polled each Commissioner with the following results: Comm. Corke does not believe the applicant has submitted the necessary information for a site plan. Comms. Boekhoven and Bricker concurred with Comm. Corke. Comm. Reynolds noted that this matter

has been before the ZBA and Planning Commission at least five times so far and the applicants still have not completed the items on the checklist, of which he believes the parking and stormwater issues are significant items and directly impact the health, safety and welfare of Township residents. Therefore, he cannot approve the site plan. Comm. Frederick concurred with Comm. Reynolds and cannot approve the site plan. Comm. Stehouwer reminded the Commission that they had also asked for evidence of an easement for access to the north parking area, which Mr. Wicklund indicated was on the engineer's list of items that was incomplete. Comm. Stehouwer stated he was not in favor of approving the site plan as it did not address the list of items the Planning Commission expected and it doesn't reflect or provide an adequate plan for review and approval.

Mr. Moran told the Planning Commission that he told a potential tenant that the site was zoned C-1, could be used for liquor sales, and that was based upon the information he had from 2007. He said he was told back then that the site was zoned commercial. He believes the potential tenant has since obtained a liquor license from the State. Mr. Moran said he did not know it was going to be a problem until his potential tenant received a letter from the Township that told him he couldn't do that. He doesn't believe he should have had to provide any of this information in the first place. He stated when he purchased the property in 1992, he asked the Township if there were any problems with the building and was told everything was fine. He did not ask that that be put in writing. He said that if parking is an issue, that potentially leaves half of the building with no value. The liquor store customers would have to park in the back and no one would want to go up the steps, buy liquor, and then go back down the steps to the back parking area. He believes the Planning Commission is taking away his ability to do anything with the building.

Mr. Burns reiterated his client's position that a site plan is not required and would like a decision tonight that he could take to the ZBA.

A motion to adopt Resolution No. 17-91 Denying Douglas Avenue Site Plan was made by Comm. Stehouwer, supported by Comm. Corke. Motion passed 7-0-0. A copy of Resolution No. 17-91 is included with a copy of these minutes.

Master Plan Discussion

Mr. Wicklund brought the Planning Commission up to date. A joint meeting with the Board was held on January 9, 2017. The elements of the Master Plan have been started, the future land use designations that tie the narrative to the map with the zoning plan that includes the zoning district classification alignment with the planned designations will be presented at the February meeting. He will keep working on the elements, put them in draft form, modify them as necessary and keep moving forward.

New Business.

No new business.

Old Business.

No old business.

Mr. Burns stated that he has not received the engineer's notes and would like a copy so that they can address it with the ZBA. Attorney Homier stated he could send him a copy of the engineer's notes or Mr. Burns could submit a FOIA request.

Mr. Moran asked if he could have the site plans back that he submitted tonight but then stated he was relying on the 12/20 drawings.

Adjournment

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

COOPER CHARTER TOWNSHIP

PLANNING COMMISSION

RESOLUTION NO. 17-91 DENYING DOUGLAS AVE SITE PLAN

At a meeting of the Planning Commission of Cooper Charter Township, Kalamazoo County, Michigan, held in the Township Hall, 1590 West D Ave, Kalamazoo, Michigan, on January 10, 2017, at 7:00 p.m.

PRESENT: Asselmeier, Boekhoven, Bricker, Corke, Frederick, Reynolds, Stehouwer.

ABSENT: None.

The following preamble and resolution was offered by Stehouwer and seconded by Corke.

WHEREAS, William and Jacqueline Moran (the “Applicants”), own real property located at 9489 Douglas Ave in the Township (the “Property”); and

WHEREAS, the Property had previously been used as a “Stretch A Dollar” store, but that portion of building has since been left vacant for at least six years; and

WHEREAS, the Applicants now wish to change the use on the Property to a “party store” for the sale of liquor; and

WHEREAS, the Township Planning Commission has never previously approved a site plan for such a use on the Property; and

WHEREAS, as required by the Township’s Zoning Ordinance, the Applicants submitted a Site Plan Application dated August 6, 2016 (the “Application”) for the use of the Property as a “party store” engaged in the sale of, among other things, liquor on the Property; and

WHEREAS, after several reviews of the Application, the Township Engineer indicated that the Site Plan Application was not sufficient for proper review by the Township Planning

Commission including, among other things, failing to comply with setback, parking, storm water retention, landscaping and other requirements specified by the Township's Zoning Ordinance; and

WHEREAS, the Township provided the Applicants with a checklist of items needed to be addressed in the Site Plan per the Zoning Ordinance; and

WHEREAS, the Applicants submitted a revised Site Plan to the Township dated December 20, 2016 ("Revised Site Plan"); and

WHEREAS, on January 10, 2017, the Township Planning Commission met to review the Application, including the Revised Site Plan, the Township's historical records regarding the Property, minutes of various other meetings regarding the Property, both from the Planning Commission and the Zoning Board of Appeals, which determined that the Applicants must comply with the site plan review provisions and requirements of the Township's Zoning Ordinance, and other documents and records submitted by the Applicants and reviews by the Township's planner and engineer, all of which are incorporated herein by reference and all in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101 *et seq.* (the "Act") and the Township's Zoning Ordinance; and

WHEREAS, after the meeting on January 10, 2017, the Planning Commission has determined that the Revised Site Plan is not in conformity with the requirements and standards in the Township's Zoning Ordinance and does not contain the information required by the Township's Zoning Ordinance; and

WHEREAS, the Planning Commission has determined that denying the Revised Site Plan is in the best interests of the health, safety and welfare of Township residents.

NOW, THEREFORE, the Planning Commission of the Charter Township of Cooper resolves as follows:

1. The Planning Commission hereby denies the Revised Site Plan for the following reasons:

- a. Applicants' proposed use as a "party store" engaged in the sale of liquor constitutes a change in use of the Property requiring site plan review and approval.
- b. The location of the building on the Property and depicted in the Revised Site Plan violates the front yard setback requirements as required in Section 120.430C.5.c of the Township's Zoning Ordinance and no variances have been granted by the Township's Zoning Board of Appeals.
- c. The Applicants have provided conflicting information regarding dimensions of the public road right of way.
- d. The proposed parking area in front of the building, as depicted on the Revised Site Plan, appears to be located within the public road right of way and does not comply with the County Road Commission's current driveway policy or standards for access. By way of example and not limitation, the Revised Site Plan does not depict any paving of any driveway access to the road right of way as prescribed by the County Road Commission, and does not provide a proper relationship between existing streets, highways, driveways and parking areas, particularly given the likely increase in the volume of traffic that a "party store" will generate.

- e. The Applicants have not received appropriate driveway permits or permission from the County Road Commission to utilize the County road right of way for ingress and egress or parking on the Property and have not supplied the Planning Commission with any documented legal right to utilize any neighboring property owners' driveways for such purposes.
- f. Existing topography of the Property indicates that all water runoff from the site will flow west onto the neighboring property in violation of the Township Zoning Ordinance. The Applicants have not provided any method for handling such storm water retention and/or runoff on the Property in the Revised Site Plan as required in Section 120.430C.5.f of the Township's Zoning Ordinance.
- g. The Applicants have not shown all required parking and drive aisle calculations and dimensions in the Revised Site Plan as required in Section 120.430C.5.f of the Township's Zoning Ordinance to ensure a proper relationship between existing streets, driveways and parking areas.
- h. The Applicants have not provided a landscape plan coordinated with parking lot islands and lighting locations in the Revised Site Plan as required in Section 120.430C.5.g of the Township's Zoning Ordinance to provide screening from adjacent land, preserve the general appearance of the neighborhood, and help control erosion and storm water discharge.
- i. The Applicants have not provided the percentage of lot open space calculations in the Revised Site Plan as required in Section 120.430C.5.g of the Township's Zoning Ordinance.

2. Any and all resolutions that are in conflict with this Resolution are hereby repealed but only to the extent to give this Resolution full force and effect.

YEAS: 7

NAYS: 0

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

I, Mark Reynolds, Secretary of the Charter Township of Cooper Planning Commission, hereby certify this to be a true and complete copy of a Resolution duly adopted at a meeting of the Planning Commission held on the 10th day of January, 2017.



Mark Reynolds
Planning Commission Secretary