

**MINUTES OF A SPECIAL MEETING OF THE COOPER CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD ON THURSDAY, JUNE 30, 2016**

A special meeting of the Zoning Board of Appeals for Cooper Charter Township was held on Thursday, June 30, 2016, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Gluchowski, Urban, Magura, Flowers and Reynolds.

Members Absent:

Also Present: Michael D. Homier of Foster, Swift, Collins & Smith, Township Attorney; Russ Wicklund, Township Planner, Applicant, William Moran, and Dan Burns, attorney for Jacqueline and William Moran.

Review and Approval of Minutes

Motion by Comm. Reynolds, supported by Comm. Flowers, to approve the Minutes from the Zoning Board of Appeals Meeting held on June 16, 2016. Motion carried 5-0.

Interpretation of Ordinance; Whether Site Plan Review Should Apply to a Legal Non-Conforming Use - 9489 Douglas Avenue.

The Chair asked Mr. Moran if there was anything he would like to bring to the Board's attention that was not in his written submittal. The Chair recognized Dan Burns, attorney for the Applicants. He stated Mr. Moran has no additional documents to offer.

The Chair asked the Board if they had any questions of Mr. Moran or Mr. Burns.

Comm. Urban stated he thought this matter had been tabled because there wasn't really an issue to rule on. It was under the premise of anticipating what was going to be ruled by the Zoning Board. The ZBA rules on objections to what the Planning Commission has done. In this case, the Planning Commission hadn't done anything yet because they hadn't had anything put in front of them. The main focus is the site plan and the need or lack thereof to submit one. He thought the Board and Mr. Moran were in agreement that a site plan needed to be submitted and that was the fulcrum of tabling the issue to allow Mr. Moran the opportunity to submit the site plan, then get a ruling and, if necessary and permitted, appeal to the ZBA.

Mr. Burns stated that they did acknowledge and still acknowledge that there are certain times in which you can request a site plan and he doesn't dispute that this is one of those times when you may request one. The rub comes with how the site plans are submitted; what is required of Mr. Moran in order to submit the site plan. The initial violations and requirements for the site plan which were the reasons they were before the Board initially were a determination by the Zoning Administrator that directly goes to the ZBA. During the time they were trying to determine whether or not it was an appropriate determination, Mr. Moran acknowledged that he was willing to submit and let the ZBA have a formal site plan, which Mr. Moran did submit. It was not

sufficient in the eyes of the Board. Mr. Moran is now back to determine whether an additional site plan to the one dated 2007 is needed. There is a new retailer coming in and it needs to be determined if this is an appropriate expansion of the pre-existing uses of the property to (1) require a site plan or (2) require compliance with the zoning ordinance.

Chair Gluchowski stated that the Applicant submitted the old site plan to the Planning Commission again in April after the ZBA meeting.

Comm. Urban asked Mr. Burns if the Applicant submitted the old site plan, which is relative to the original, non-conforming request.

Chair Gluchowski stated the Applicant submitted the site plan that was submitted back in 2006 and that site plan was found to have deficiencies. The Applicant was asked to supply the additional material. The Applicant did not do so and the thing sat in limbo from 2006 to 2016.

Comm. Urban asked whether the site plan that was originally submitted was in reference to the original, non-conforming use request. Mr. Burns confirmed that it was; it was a request for confirmation. Mr. Urban reviewed the application process. The Applicant would submit a site plan, which addresses all the things the Applicant is going to do to convince the township to allow the non-conforming use. The township then evaluates the site plan in terms of its relevancy and necessity as opposed to what the request is from the applicant. Mr. Burns stated that this explanation made sense. Comm. Urban then gave two examples (zoo and library) which would have different requirements for their site plans. Mr. Burns stated he understood the distinction between the examples. Mr. Burns asked whether there had been a prior zoo or library because in his instance, there had been a prior site plan that had been accepted. He stated that they were not notified that the old site plan was deficient; they were told to file a new site plan. Comm. Urban stated that the site plan is an integral part of the request itself, not the category of the request. The Board has to take in the totality of the circumstances and wonders how he is supposed to take in the totality of the circumstance that was back in 2007 and pull it forward to 2016. Mr. Burns stated there was no change. Comm. Urban disagreed and used the example of a zoo and a library. Mr. Burns stated he is talking sales of goods and sales of goods.

Mr. Burns stated that his client believed he had submitted a site plan in 2006/2007. The Township has gone back and forth as to whether or not it was sufficient. Mr. Moran went before the Board, there was a citation involved, he addressed all of the issues, submitted a site plan and thought everything was fine.

Mr. Burns stated they understand that the Board may require a site plan for certain events; however, they shouldn't have to have engineered drawings. He understands there may have been some scale issues and other details. There were other issues of which they were not aware. He again reiterated that they are willing to submit, if required, a site plan. The issue is whether or not upon submission of a site plan it is required that they define all these non-conforming elements to comply with the zoning ordinance as it stands today.

Chair Gluchowski stated that that would be decided in the review of the site plan and that can't be decided until it is submitted. The Applicant is creating a circular formula here. Mr. Burns

stated that even though they submitted a site plan, they didn't get anything back that said it was insufficient or listed everything the Township needed.

Attorney Homier stated that the Township Engineer did a review and listed all the items that were deficient and Mr. Burns was provided a copy. Mr. Burns acknowledged receipt and stated that was why they appealed. Attorney Homier asked Mr. Burns if Mr. Burns had previously stated that the Applicant would submit a site plan where the Applicant can't or won't meet any of these checklist items. Mr. Burns stated he was aware of a letter from an engineer which included deficiencies with the site plan, scaled engineered drawings and a number of elements within the site itself. Mr. Burns stated that nothing has changed as far as substance of the site. At this time they don't know what is sufficient for a site plan.

Chair Gluchowski said it appears the Applicant is not aware of what is required in a site plan. The Township has a checklist of all the elements that need to be in the site plan. That site plan then becomes the basis for review of the property. The type of business may create a different need than another type of business (i.e. a medical device business may need more handicap parking). It allows the Township to evaluate the elements that are there with the needs of the business that is going in.

Comm. Urban asked Mr. Burns if his position is that once a site plan is approved for a non-conforming use (i.e. commercial) then it is always commercial, despite the type of commercial going in. The ordinances are set up to be individually assessed against the request put forth to the Board. Mr. Moran is now requesting the Board to accept a site plan based upon a commercial enterprise of one nature but yet applying it to a different type commercial enterprise. He asked Mr. Burns if the site plan from 12 years ago addressed the necessity for lighting and parking and was it addressed against the usage. Mr. Burns stated it was addressed for a general retail outlet. Mr. Burns reiterated that his client received a notice that he was going to have to submit a site plan and bring his property into compliance. He filed a Request for Redetermination of that finding with the Zoning Administrator. Mr. Burns does not believe that a site plan is required. When they got to the Board meeting, they acknowledged that the Board is entitled to and want some updated form, so that the Board could do a review. Without getting into that aspect of the Request for Redetermination, they stated they would go through the process at the lower level, try to address the non-conforming aspects or correct them. They went to the lower level, but at that lower level, they did not submit a brand new site plan because Mr. Moran could not afford to have engineered drawings put together and there were other things that made it difficult. They don't feel that it is an event that would require a site plan review at this time; it is also not an expansion of the physical presence or use. He believes they are at an impasse at this time. The Board cannot make the determination if the old, non-conforming aspects need to be brought into compliance based on the request. The retail aspect of a liquor store only requires approval of the Liquor Control Commission. Comm. Urban stated that the unique aspects of that particular retail directly feed into his decision-making as to whether or not that site plan that is submitted is adequate for the request before him. Comm. Urban asked what were the hours of operation for the previous establishment. Mr. Moran stated 9:00 a.m. to 9:00 p.m. and there were certain days of the week it was 10:00 p.m. Comm. Urban asked what are the intended hours of operation for the new establishment. Mr. Moran did not know what the intended hours of operation would be. When asked by Comm. Urban if he (Mr. Moran) didn't

think that would be pertinent information, Mr. Moran said he hasn't gotten that far yet. He has spent years trying to get the space rented. Once he got it rented, then he had to get a license from with the Liquor Control Commission. When completing the 201(C), he filled out that he was zoned for that type of commercial. He was specifically told that in 2006. He said, if that is not the case, then the Township needs to classify every one of the items in the 201(C).

Chair Gluchowski pointed out that that there are outstanding elements not covered in the old site plan. Chair Gluchowski asked Julie Muller for a copy of the last approved site plan for Mr. Moran's parcel, to which she was told that there has never been one approved. There was one that was being negotiated but they walked away and it was dropped. Mr. Burns stated they walked away because it was settled, not because they walked away. They were approved. Chair Gluchowski asked if they had a letter from the Township to that effect. Mr. Burns didn't recall having any kind of letter. Mr. Moran then gave some background history of the building. He has been through a lawsuit; he cannot make the repairs necessary to bring it up to code because of the lack of funds. He claims that in 1991 or 1992 when he bought the building, he asked the Township if there was anything wrong with the building or anything they were going to want done before he made an offer. He said they told him "no". However, he doesn't have a letter or anything to confirm this conversation. He said he got a survey and gave that to the Township. Mr. Burns stated that through the years, they didn't receive any notices of non-compliance. Mr. Burns stated in 2006 his client submitted parking studies, a survey, and other documents. Mr. Moran stated the last business closed in 2010. The checklist in the file is the one provided to every applicant. It was noted that the drawings were not to scale, there was no legend and no legal description. Chair Gluchowski asked what elements the Planning Commission was looking for when they appeared before them in April 2016. It appears that the items followed the Prein & Newhof list (survey, topographical map, easement for access to the property, commercial driveway, relocation of parking, floor plan for liquor store, storm water issues, lighting). Mr. Burns stated that he felt they had already complied with some of these items. Mr. Burns requested a short intermission.

Meeting reconvened by Chair Gluchowski.

Public Hearing

Mr. Kris Witteveen, who is a homeowner adjacent to the property, asked if he could get a copy of the Minutes of what had just taken place. Attorney Homier stated he and Mr. Burns were discussing the information that is necessary to determine what elements those are, and what types of variance could be requested and/or reviewed and approved.

Public hearing is closed.

Chair Gluchowski posed the following question to Mr. Wicklund: in a commercial building, if a business closes and another business wants to open, does the Township require a site plan submittal for some type of administrative review. Mr. Wicklund stated that anytime a process is started, the Township goes back and pulls the property file to see what approvals have been granted in the past. In Mr. Moran's case, there was no approved site plan for his property. A site plan had been submitted in 2007 for the Stretch-A-Dollar store. It was tabled. It ultimately

resulted in litigation. Without having an approved detailed site plan per the ordinance or any approved site plan that was approved by the Planning Commission, he said that he, as the zoning administrator, does not have the ability to approve anything administratively related to that. The ordinance only allows him to do that on approved site plans. Chair Gluchowski asked if the Planning Commission has the authority to deviate from the checklist. Mr. Wicklund stated the Planning Commission has a checklist and requests the engineer to do a review. The review would include recommendations to the Planning Commission to assist them. If a use comes along that is different and has its own set of criteria, no matter what they are, the determination is made that either they can make use changes administratively, he can approve them administratively, provided it is an approved plan provided they conform to the ordinance or it goes back to the Planning Commission. Without having any approved site plan for this site, there isn't anything he can do administratively to say yes or no to anything they want to do at that site. It has to go to the Planning Commission; they are the only ones who can make that determination.

Comm. Flowers asked where does the ZBA's role come into play. Mr. Wicklund stated their role was to make an interpretation whether a non-conforming site requires site plan review and for variances from any requirement of the site that could not be met. Examples of variances they may need are for parking and stormwater.

Mr. Burns reiterated that in 2006 Mr. Moran submitted a site plan which was looked at by the Planning Commission. The Planning Commission had a number of issues and the engineer wrote a letter stating that the site plan was defective. Mr. Burns was under the impression that they had gone through the process already. They will do their best to address the deficiencies in the site plan and give you information to make a decision. They would like Prein & Newhof to sort out which ones are deficiencies in the site plan and which ones are deficiencies as far as conforming with the list. His client has a survey and he will do his best to fill in the other holes in the site plan and submit that. He doesn't believe he'll have to have another round with the Planning Commission; however, Mr. Homier stated that it will require another meeting with the Planning Commission, but it depends on what the ZBA does. Upon examination of the elements required, then one can determine if a variance is needed from any of the provisions. If the ZBA granted the request, that site plan would still go to the Planning Commission with the variance grant from the ZBA and the Planning Commission would then review the site plan, knowing that variances had been granted on certain elements.

Mr. Burns asked if the Planning Commission would know that the ZBA had determined that certain aspects were pre-existing and non-conforming and therefore acceptable. He asked whether the ZBA could come back and grant variances, send it back to the Planning Commission with the variances. Could the ZBA acknowledge and confirm that this doesn't conform; however, it is a pre-existing, non-conforming use and send it back to the Planning Commission with certain variances, certain ones denied and certain ones found to be pre-existing, non-conforming and acceptable as a result? He asked if those would be the categories that would come back to the Planning Commission. Mr. Homier stated that all of that is wrapped up in this whole interpretation issue over the review and approval from Mr. Wicklund's interpretation that a site plan is required. He asked Mr. Burns if it is his argument that the property is a legal non-conforming site, the use is conforming, the site elements are not. Mr. Wicklund is saying Mr.

Moran needs an approved site plan because the Township does not have an approved site plan, what elements of that site plan are required because they either are not legal non-conforming site elements or they are and they are not required to come in to conformity. Through the process, Mr. Homier believes they can get to that same answer, along with what variances may or may not be necessary. Mr. Burns confirmed to start that process, everyone needs a site plan with the boxes checked off so they can determine which variances are needed. Mr. Burns asked again how the site plan was deficient. He asked if there was a way to separate out what Prein & Newhof had on their list and what aspects were non-conforming so that they could comply. Mr. Homier said they could be separated as follows: prepare a list of the lack of items in the submission alone that need to be included and get that list to Prein and Newhof so that they can then make a determination as to where Mr. Moran is deficient under the requirements of the ordinance. That suggestion is what Mr. Burns would like to do. Mr. Homier stated he would get Mr. Burns a copy of the list from Prein & Newhof of the deficient items.

A motion to deny the variance request was made by Comm. Flowers for the reason that sufficient information was not submitted to allow the ZBA to make a determination regarding the scope of the variances requested as discussed, supported by Comm. Reynolds. Motion carried 4-1.

A motion to move the matter of interpretation off the table and put it in front of the ZBA for consideration was made by Comm. Urban, supported by Comm. Reynolds. Motion carried 5-0.

A motion to deny the request and require a site plan to be submitted by the Applicant for the reasons already discussed was made by Comm. Magura, supported by Comm. Reynolds. Motion carried 5-0.

Mr. Burns asked if the variance request could be tabled so that Mr. Moran didn't have to pay another fee. It was pointed out that the ZBA does not have the authority to waive the fee. The supervisor would have to make that determination.

Comm. Magura made a motion to waive the fee. There was no support.

Comm. Magura made a motion to rescind his prior motion. Comm. Flowers stated it must be the supervisor's decision whether the fee should be waived. There being no support for the motion, the motion died for lack of support.

Adjournment

There being no further business to come before the Board, a motion to adjourn was made by Comm. Reynolds, supported by Comm. Urban. Motion carried 5-0.