

**MINUTES OF THE COOPER CHARTER TOWNSHIP**  
**ZONING BOARD OF APPEALS HELD ON THURSDAY, JUNE 21, 2018**

A meeting of the Zoning Board of Appeals for Cooper Charter Township was held on Thursday, June 21, 2018, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

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

Members Absent:                   None.

Also Present:                       Russ Wicklund, Township Planning Consultant; Applicant, William Moran and his Attorney, Dan Burns; Natalie Gilbert from Esquire Deposition Solutions, and Attorneys Craig Noland and Michael Homier.

Chairperson Gluchowski called the meeting to order at 4:30 p.m.

**Review and Approval of Minutes**

It was noted that Attorney Michael Homier should be listed in the Minutes of the May 10, 2018, Zoning Board of Appeals meeting as an attendee. A Motion was made by Chairperson Gluchowski, supported by Comm. Urban, to approve the Minutes, as amended. Motion carried 5-0.

**Interpretation of Cooper Township Ordinance - William Moran, 9489 Douglas Avenue (Parcel No. 08-426-016).**

Court reporter Natalie A. Gilbert from Esquire Deposition Solutions was present and prepared a transcript of the proceedings. The transcript is attached, incorporated by reference and, together with this document, shall constitute the entire minutes of the proceedings.

**Public Comment**

No public comment.

**Adjournment**

There being no other business, a motion to adjourn was made by Comm. Urban, supported by Comm. Magura. Motion carried 5-0.

**In the Matter Of:**

**MORAN V. COOPER CHARTER TOWNSHIP**

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**ZBA MEETING**

*June 21, 2018*

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NOTICE OF SPECIAL MEETING

COOPER CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS MEETING

THURSDAY, JUNE 21, 2018

4:30 P.M.

COOPER CHARTER TOWNSHIP HALL

1590 WEST D AVENUE

KALAMAZOO, MI 49009

REPORTED BY: Natalie A. Gilbert, CSR-4607  
Certified Shorthand Reporter

1 Kalamazoo, Michigan

2 Thursday, June 21, 2018 - 4:30 p.m.

3 SHERYL GLUCHOWSKI: It is 4:30. We'll call  
4 this meeting to order. Do I have a motion to approve the  
5 minutes from the 5/10 meeting? Have you all read the  
6 minutes of the 5/10 meeting?

7 STEPHEN MAGURA: When you say minutes, do you  
8 mean the transcript?

9 SHERYL GLUCHOWSKI: No. The transcript is the  
10 attachment part of it.

11 MICHAEL HOMIER: The minutes consist of two  
12 documents, which include the transcript which is  
13 attached.

14 STEPHEN MAGURA: I see the minutes now.

15 SHERYL GLUCHOWSKI: It's called Exhibit A.  
16 I'll give you a moment to read those before a motion is  
17 made.

18 MICHAEL HOMIER: Was that a motion to approve  
19 the minutes as amended?

20 SHERYL GLUCHOWSKI: I did make that motion, if  
21 no one else would like to.

22 KEITH URBAN: It sounds like you got it.

23 SHERYL GLUCHOWSKI: Is that a support?

24 KEITH URBAN: Did you make an official motion?

25 SHERYL GLUCHOWSKI: Yes.

1 KEITH URBAN: Yes. I'll support that motion.

2 SHERYL GLUCHOWSKI: All in favor say aye.

3 MARK REYNOLDS: Aye.

4 CURT FLOWERS: Aye.

5 STEPHEN MAGURA: Aye.

6 SHERYL GLUCHOWSKI: Opposed. Motion carried.

7 Next on our agenda is to have a closed session.

8 KEITH URBAN: Do you have to approve the  
9 minutes of the meeting or not?

10 MICHAEL HOMIER: We just did. The minutes were  
11 just approved. You supported.

12 KEITH URBAN: Okay. I'd like to make a motion  
13 to adjourn to a closed session to discuss certain pending  
14 litigation in the case of Moran versus Cooper Township,  
15 Case Number 2017-0134-CZ and to discuss a written  
16 confidential legal opinion with the Township's attorneys.  
17 This motion shall also include the Township's plan to  
18 prosecute the claim.

19 MICHAEL HOMIER: There needs to be a role call  
20 vote.

21 SHERYL GLUCHOWSKI: Curt Flowers.

22 CURT FLOWERS: Yes.

23 SHERYL GLUCHOWSKI: Mark Reynolds.

24 MARK REYNOLDS: Yes.

25 SHERYL GLUCHOWSKI: Stephen Magura.

1                   STEPHEN MAGURA: Yes.

2                   SHERYL GLUCHOWSKI: Keith Urban.

3                   KEITH URBAN: Yes.

4                   SHERYL GLUCHOWSKI: Sheryl Gluchowski. Yes.

5                   MICHAEL HOMIER: All right.

6                   DAN BURNS: I would object that it shouldn't be  
7 closed, but subject to that, you guys are going to do  
8 what you want, but for the record, I think it should be  
9 open.

10                  MICHAEL HOMIER: It shouldn't be closed why?

11                  DAN BURNS: This is part of the opening  
12 meeting. I don't see anything on the agenda that it was  
13 approved for a closed meeting.

14                  MICHAEL HOMIER: This is the agenda. It says  
15 closed session, and the reason for that is permissible  
16 under the Open Meetings Act to discuss pending civil  
17 litigation, which we've named both by title and by case  
18 number.

19                  DAN BURNS: Where is closed session on here?

20                  MICHAEL HOMIER: To discuss a written  
21 confidential legal opinion with the Township's attorneys.

22                  DAN BURNS: Where does it say closed meeting?

23                  MICHAEL HOMIER: Right here. You may have a  
24 prior version of the agenda.

25                  DAN BURNS: I have the one that was forwarded

1 to me.

2 MICHAEL HOMIER: I think it was updated since  
3 then.

4 DAN BURNS: I'll just disagree. It's  
5 inappropriate and I'll just object for the record.

6 MICHAEL HOMIER: Okay. I don't know if the  
7 Township offices are open. They're closed now.

8 DAN BURNS: Do you want us to leave?

9 MICHAEL HOMIER: Yes. You're going to have to  
10 at the present step out until we reopen. Off the record.

11 (Off the record at 4:36 p.m.)

12 (Back on the record at 5:29 p.m.)

13 SHERYL GLUCHOWSKI: I would entertain a motion  
14 to close the closed session and open an open session.

15 STEPHEN MAGURA: So moved.

16 SHERYL GLUCHOWSKI: Support.

17 CURT FLOWERS: Support.

18 SHERYL GLUCHOWSKI: All in favor say aye.

19 MARK REYNOLDS: Aye.

20 KEITH URBAN: Aye.

21 SHERYL GLUCHOWSKI: Aye. Opposed. Motion  
22 carried.

23 MICHAEL HOMIER: All right. So we're back in  
24 open session from a closed session to discuss a written  
25 confidential legal opinion in the pending civil

1 litigation and I have provided to each of you a draft  
2 copy of the resolution.

3 As you may recall, we're here to consider  
4 questions that were put to the Zoning Board of Appeals by  
5 Court order and that is to provide an interpretation of  
6 the Zoning Ordinance as it applies to the applicant's  
7 pre-existing, nonconforming use aspects and in particular  
8 to state whether a change in the use and/or aspects of  
9 the property has occurred and to state the parameters of  
10 what is and is not permitted on the applicant's property  
11 under the Cooper Charter Township Zoning Ordinance.

12 The ZBA I'm sure has certainly knowledge of the  
13 full parameters of the case but I just want to make I  
14 guess a record of an issue that was raised by Mr. Burns  
15 regarding Mr. Reynolds' involvement. Mr. Reynolds as you  
16 know is a member of the Planning Commission and he  
17 previously denied site plan review in that case because  
18 the site plan did not address all of the information  
19 necessary under the Zoning Ordinance that was upon  
20 application for site plan review.

21 Mr. Reynolds also participated on the ZBA to  
22 consider variances related to the property and an appeal  
23 on the Zoning Administrators determining that a site plan  
24 was required in the first place, but this issue is  
25 different inasmuch as there has never been an



1 interpretation requested, except now on remand from the  
2 Circuit Court, which is an entirely different issue than  
3 the others that Mr. Reynolds may have voted upon, and so  
4 my conclusion would be that Mr. Reynolds is permitted to  
5 consider and vote on the interpretation as remanded by  
6 the Circuit Court.

7 Now one other thing is that I have drafted a  
8 resolution dealing with this case. That resolution is  
9 before you. You need to consider the resolution or take  
10 some other action with respect to the case within the  
11 framework that I mentioned and that is provide an  
12 interpretation of the Zoning Ordinance as it applies to  
13 the property here and the pre-existing, nonconforming use  
14 aspects and in particular to state whether a change in  
15 the use and/or aspects of the property has occurred and  
16 to state the parameters of what is and is not permitted  
17 under the Township Zoning Ordinance, and with that, I  
18 will give the matter back to the Board.

19 SHERYL GLUCHOWSKI: Thank you. We're going to  
20 declare the public hearing open.

21 MICHAEL HOMIER: No. There is no public  
22 hearing. You've had the public hearing.

23 SHERYL GLUCHOWSKI: Comment.

24 MICHAEL HOMIER: This is -- well, you have to  
25 have public comment as part of the meeting but that

1 public comment can be anywhere on the agenda. So if you  
2 want to allow public comment now, it's probably an issue  
3 where you would want to put the public comment after  
4 because we're already into I suppose the discussion and  
5 deliberation of this particular matter.

6 SHERYL GLUCHOWSKI: Okay.

7 STEPHEN MAGURA: I'd like to make a motion.

8 SHERYL GLUCHOWSKI: Go ahead.

9 STEPHEN MAGURA: To approve that this  
10 statement -- or to approve this resolution that we have  
11 in front of us.

12 SHERYL GLUCHOWSKI: I have a motion to approve  
13 Resolution Number ZBA 2018-01. Is there support?

14 CURT FLOWERS: I'll support.

15 DAN BURNS: Can we have that read into the  
16 record? Right now it's not known what that is, if it's  
17 part of the opening hearing, if it's an actual motion,  
18 just if you could state what the actual language of that  
19 is.

20 MICHAEL HOMIER: I don't necessarily have an  
21 issue with doing it but I would note it's not a  
22 requirement of any law or statute that I'm aware of,  
23 unless you can think of a different one.

24 DAN BURNS: I believe it's required. It's  
25 open.

1           MICHAEL HOMIER: What's required?

2           DAN BURNS: That you state what the motion is.  
3 It's got to be particular.

4           MICHAEL HOMIER: The motion was to adopt  
5 Resolution ZBA 2018-01.

6           DAN BURNS: Right, and that needs to be known  
7 or attached or something.

8           MICHAEL HOMIER: No. I don't know what law  
9 you're citing.

10          DAN BURNS: Open Meetings Act.

11          MICHAEL HOMIER: I think you said it's required  
12 by the Opening Meetings Act. Do you have any particular  
13 statutory reference or just generally?

14          DAN BURNS: I believe that it covers the fact  
15 that anything attached to a motion has to be made open.

16          MICHAEL HOMIER: Okay. Well --

17          DAN BURNS: I'm just looking for so it's on the  
18 record.

19          MICHAEL HOMIER: I don't have any problem  
20 reading it in there but I think your objection or your  
21 request is unfounded and I don't believe the law provides  
22 for any of that, either under the Open Meetings Act, FOIA  
23 or the Zoning Enabling Act. That said, I can read it in  
24 if you'd like.

25          DAN BURNS: I disagree but the logical

1 conclusion to not having it be an open --

2 MICHAEL HOMIER: This is a public hearing, Dan,  
3 so I said I would read it in, okay. All right.

4 Cooper Charter Township, Zoning Board of  
5 Appeals, Resolution Number ZBA 2018-01, Zoning Ordinance  
6 Interpretation. At a meeting of the Zoning Board of  
7 Appeals of Cooper Charter Township, Kalamazoo County,  
8 Michigan, held in the Township Hall, 1590 West D Avenue,  
9 Kalamazoo, Michigan, on June 21, 2018, at 4:30 p.m.  
10 Present and absent, a place for you to fill that in.

11 The following preamble and resolution was  
12 offered by blank and seconded by blank. Whereas, William  
13 and Jaqueline Moran, (the "Applicants"), own real  
14 property located at 9489 Douglas Avenue in the Township  
15 (the "Property"); and whereas, the Property had  
16 previously been used as a ceramics store and a "Stretch A  
17 Dollar", but the commercial portion of the building has  
18 since been left vacant for at least six years; and

19 Whereas, the Applicants now wish to use the  
20 Property as a "party store" for the sale of liquor; and  
21 whereas, the Township Planning Commission has never  
22 previously approved a site plan for such a use on the  
23 Property; and whereas, on November 14, 2015, the  
24 Applicants submitted a "Request for Site Plan Review" for  
25 the use of the Property as a "party store" engaged in the

1 sale of, among other things, liquor on the Property. The  
2 submission also requested relief from the Township's  
3 Zoning Board of Appeals, including several variance  
4 requests; and

5           Whereas, the Township Board of Appeals held a  
6 meeting on February 26, 2016, to review the request. The  
7 minutes of the meeting indicated that the "Applicants  
8 concede that site plan review is required". Because  
9 there was no dispute as to whether a site plan was  
10 required, the minutes reflect that "this should be  
11 brought before the Planning Commission for review of the  
12 site plan and a determination regarding required site  
13 elements. This matter is premature and should be  
14 tabled." A motion to table was made and passed; and

15           Whereas, the Planning Commission considered the  
16 November 14, 2015, request at its meeting on April 12,  
17 2016. Despite the concession at the Zoning Board of  
18 Appeals meeting that a site plan review was required,  
19 Applicants argued that the Planning Commission should  
20 find that a site plan is not required.

21           After extensive discussion, the Planning  
22 Commission tabled the request to allow the Applicants to  
23 go back to the Zoning Board of Appeals for a  
24 determination regarding whether a site plan is required.  
25 The Planning Commission also indicated that "if required,

1 the Applicants shall submit a site plan for review  
2 pursuant to the requirements of the Zoning Ordinance";  
3 and

4           Whereas, on May 26, 2015, the Applicants  
5 submitted a Request for a Variance to the Zoning Board of  
6 Appeals including the same variance requests as the  
7 November 14, 2015, request. At a meeting on June 30,  
8 2016, the Zoning Board of Appeals denied the variance  
9 request for the reasons that sufficient information was  
10 not submitted so allow the Zoning Board of Appeals to  
11 make a determination regarding the scope of the variance  
12 request. However, the Zoning Board of Appeals did  
13 determine that a site plan is required to be submitted by  
14 the Applicants; and

15           Whereas, the Applicants then submitted a Site  
16 Plan Application and Variance Request dated August 6,  
17 2016 (the "Application"); and whereas, after several  
18 reviews of the Application, the Township Engineer  
19 indicated that the Application was not sufficient for  
20 proper review by the Planning Commission because, among  
21 other reasons, it failed to adequately address setbacks,  
22 parking, storm water retention, landscaping and other  
23 requirements specified in the Township's Zoning  
24 Ordinance; and

25           Whereas, the Township provided the Applicants

1 with a checklist of items needed to be addressed in the  
2 Site Plan per the Zoning Ordinance; and whereas, the  
3 Applicants submitted a revised Site Plan to the Township  
4 dated December 20, 2016, ("Revised Site Plan"); and

5           Whereas, on January 10, 2017, the Township  
6 Planning Commission met to review the Application,  
7 including the Revised Site Plan, the Township's  
8 historical records regarding the Property, minutes of  
9 various other meetings regarding the Property, both from  
10 the Planning Commission and the Zoning Board of Appeals,  
11 which determined that the Applicants must comply with the  
12 site plan review provisions and requirements of the  
13 Township's Zoning Ordinance, and other documents and  
14 records submitted by the Applicants and reviews by the  
15 Township's Planner and Engineer; and

16           Whereas, after the meeting on January 10, 2017,  
17 the Planning Commission denied the Revised Site Plan,  
18 determining that the Revised Site Plan was not in  
19 conformity with the requirements and standards in the  
20 Township's Zoning Ordinance and did not contain the  
21 information required by the Township's Zoning Ordinance;  
22 and

23           Whereas, on February 7, 2017, the Applicants  
24 submitted another "Request for Variance to the Zoning  
25 Ordinance" which included a narrative that was

1 substantially identical to the narratives provided in the  
2 prior Planning Commission and Zoning Board of Appeals  
3 requests and asked the Zoning Board of Appeals to  
4 determine whether a site plan was required; and

5           Whereas, on March 3, 2017, the Township's  
6 Zoning Administrator sent Applicants a letter advising  
7 them that the variance request could not be processed  
8 because the Zoning Board of Appeals does not have  
9 authority to grant a rehearing on the same issues; and

10           Whereas, the Applicants filed a lawsuit/appeal  
11 in the Kalamazoo County Circuit Court against the  
12 Township and the Township "Zoning Department" alleging,  
13 among other things, that the proposed use of the Property  
14 was a lawful pre-existing nonconforming use (Case Number  
15 2017-0134-CZ); and

16           Whereas, following a hearing on the Township's  
17 Motion for Summary Disposition, the Court entered an  
18 Order on March 14, 2018, remanding the matter to the  
19 Zoning Board of Appeals with instructions to hold a  
20 public hearing and provide an interpretation of the  
21 Zoning Ordinance "as it applies to the Morans'  
22 pre-existing, nonconforming use/aspects; in particular to  
23 state whether a change in the use and/or aspects of the  
24 Morans' property has occurred, and to state the  
25 parameters after of what is and is not permitted on the



1 Morans' property under the Cooper Charter Township Zoning  
2 Ordinance"; and

3           Whereas, the Zoning Board of Appeals conducted  
4 a public hearing on May 10, 2018, pursuant to that Court  
5 order. (Exhibit A, Minutes of May 10, 2018, meeting).

6           Now, therefore, the Zoning Board of Appeals of  
7 the Charter Township of Cooper resolves as follows:

8           Number 1, the Zoning Board of Appeals hereby  
9 finds that while the proposed use of the Property as a  
10 "party store" for the sale of liquor was a use permitted  
11 by right at the time the Applicants filed their original  
12 Application, the proposed use constituted an "extension,  
13 alteration or addition" of the prior dollar store use  
14 under Section 120.330(A) of the Township's Zoning  
15 Ordinance and, therefore, no prior legal nonconforming  
16 site elements/aspects are extended to the new use of the  
17 Property. In support of this finding, the Zoning Board  
18 of Appeals notes the following:

19           A, Section 120.330(A) of the Township's Zoning  
20 Ordinance provides as follows with respect to  
21 nonconforming uses: "Nonconforming uses, lots or  
22 structures in existence at the time of passage of this  
23 Ordinance shall not be extended, added to or altered  
24 unless such extensions, alterations or additions are in  
25 conformity with the provisions of this Ordinance."

1           B, the "party store" use constitutes an  
2 "extension, alteration or addition" of the dollar store  
3 use under Section 120.330(A) because of the change in the  
4 type of goods being sold. The Michigan Court of Appeals  
5 has previously determined that even a change in the type  
6 of a liquor license constitutes a "new use" of property,  
7 Livonia Hotel, LLC, versus City of Livonia, 259 Mich App  
8 116, 130; 673 NW2nd 763 (2003).

9           The Court determined in Livonia that while the  
10 property owner may have had a vested nonconforming right  
11 to utilize a Class B hotel liquor license that a previous  
12 property owner obtained before a Zoning Ordinance  
13 amendment, the owner did not have a vested right to  
14 operate a restaurant pursuant to a Class C liquor license  
15 "because this constituted a new use of the property" even  
16 though Class B and C liquor licenses both provided for  
17 the sale of the same forms of alcohol.

18           Here, the change of use is even more apparent.  
19 The Applicants have produced no evidence and the Zoning  
20 Board of Appeals is not aware of any evidence that the  
21 Property has ever had a liquor license, nor has the  
22 Property ever been used for the retail sale of alcohol.  
23 However, even if there were such evidence, the  
24 nonconforming elements/aspects of the Property related to  
25 the retail sale of alcohol has long since been abandoned

1 by the subsequent and sporadic use of the Property as a  
2 ceramics store and "Stretch A Dollar" store. Under the  
3 facts presented in this matter and Livonia, the liquor  
4 store is a "new use" of the Property sufficient to be  
5 considered an "alteration" under the Township's Zoning  
6 Ordinance.

7 C, the "party store" use constitutes an  
8 "extension, alteration or addition" of the dollar store  
9 use under Section 120.330(A) because of the liquor  
10 expanded hours of operation. Michigan Courts have  
11 already held that the extension of operating hours alone  
12 constitutes an unlawful expansion of a nonconforming use,  
13 Garb-Ko versus Carrollton, 86 Mich App 350, 353-354; 272  
14 NW2d 350 (1978).

15 Because of the sporadic use of the Property as  
16 a ceramics store and "Stretch A Dollar" store, it is  
17 reasonable to conclude, and the Zoning Board of Appeals  
18 finds, that the retail sale of alcohol would result in  
19 longer hours of operation and likely include weekend  
20 hours constituting an unlawful expansion of the  
21 nonconforming use/aspects of the site elements of the  
22 Property. To be clear, the proposed use may be permitted  
23 but the site plan must conform to the requirements set  
24 forth in the Township's Zoning Ordinance.

25 D, the "party store" use constitutes an

1 "extension, alteration or addition" of the dollar store  
2 use under Section 120.330(A) because the liquor store  
3 would likely require additional lighting and signage. It  
4 is reasonable to conclude, and the Zoning Board of  
5 Appeals finds, that these requirements would lead to a  
6 greater number of lights and signage elements on the  
7 Property, which constitutes an extension of the use.

8 See e.g. Century Cellnet of Southern Michigan  
9 Cellular Limited Partnership versus Summit Township, 250  
10 Mich App 543, 549; 655 NW2d 245 (2002) (holding that  
11 replacing three antennas on a tower with six constitutes  
12 an unlawful expansion of a nonconforming use even despite  
13 the fact that these antennas would be smaller than the  
14 current antennas). To be clear, the proposed use may be  
15 permitted but the site plan must conform to the  
16 requirements set forth in the Township's Zoning  
17 Ordinance.

18 Number 2, the Zoning Board of Appeals also  
19 determines that, in addition to the findings set forth  
20 above, no prior legal nonconforming site elements/aspects  
21 are extended to the new use of the Property because the  
22 party store constitutes an "extension, alteration or  
23 addition" of the prior dollar store use, under the  
24 current Township Zoning Ordinance, which has been amended  
25 since the Applicants filed their initial Application.

1 Under the current Township Zoning Ordinance, a  
2 party store engaged in the business of selling package  
3 liquor is only permitted by special exception use on the  
4 Property under Section 120.200. Under Michigan law, a  
5 zoning authority may amend its zoning ordinance even  
6 after a zoning application is filed or litigation is  
7 commenced related to the zoning application.

8 Moreover, the zoning ordinance in effect at the  
9 time of the Court's ultimate decision is the law to be  
10 applied by the Court. See, e.g., *Klyman versus City of*  
11 *Troy*, 40 Mich App 273, 277; 198 NW2d 822 (1972); see also  
12 *Grand/Sakwa of Northfield, LLC, versus Township of*  
13 *Northfield*, 304 Mich App 137, 141; 851 NW2d 574 (2014);  
14 *Franchise Realty Interstate Corporation versus City of*  
15 *Detroit*, 368 Mich 276, 279; 118 NW2d 258 (1962); *Lockwood*  
16 *versus City of Southfield*, 93 Mich App 406, 410; 536 NW2d  
17 249 (1995); *Landon Holdings, Inc., versus Grattan*  
18 *Township*, 257 Mich App 154, 161; 667 NW2d 93 (2003);  
19 *Great Lakes Society versus Georgetown Charter Township*,  
20 281 Mich App 396, 419; 761 NW2d 371 (2008).

21 Therefore, the Property cannot be used as a  
22 party store engaged in the business of selling packaged  
23 liquor until the Applicants submit an application for a  
24 special exception use permit and that application is  
25 approved by the Township's Planning Commission. An

1 application for a special exception use permit also  
2 requires the submission of a site plan and compliance  
3 with the relevant site standards set forth in the  
4 Township's Zoning Ordinance. To date, the Applicants  
5 have not submitted either a site plan or an application  
6 for a special exception use permit to use the Property as  
7 a liquor store under the current Zoning Ordinance.

8           Number 3, accordingly, the Zoning Board of  
9 Appeals affirms its prior decision that the Applicants  
10 must submit a site plan and comply with the applicable  
11 site standards and further finds that the Applicants must  
12 also submit an application for a special exception use  
13 permit in order to lawfully use the Property as a party  
14 store engaged in the business of package liquor sales  
15 under the Township's Zoning Ordinance.

16           Number 4, the Zoning Board of Appeals further  
17 notes that Section 120.200 of the Township's Zoning  
18 Ordinance provides a comprehensive list of uses permitted  
19 by right and by special exception use on the Property  
20 zoned C-1. (See attached Exhibit B). The Property may  
21 be used for any of those uses permitted by right and for  
22 any uses permitted by special exception upon approval by  
23 the Township Planning Commission. Any use not included  
24 in Section 120.200 as either permitted uses or special  
25 exception is not permitted on the Property.

1           Number 5, any and all resolutions that are in  
2 conflict with this Resolution are hereby repealed but  
3 only to the extent to give this Resolution full force and  
4 effect.

5           KEITH URBAN: I believe there was already a  
6 motion.

7           SHERYL GLUCHOWSKI: There is a motion. We're  
8 open for discussion.

9           MICHAEL HOMIER: Was there support?

10          SHERYL GLUCHOWSKI: Yes, there was.

11          CURT FLOWERS: I supported.

12          MICHAEL HOMIER: Okay. Thank you.

13          SHERYL GLUCHOWSKI: I had kind of prepared a  
14 statement not knowing that he was going to come in with  
15 this prepared resolution but I'm going to read it so that  
16 you know where I was standing.

17                 There are two questions to consider tonight,  
18 has a change in use occurred and whether use is not  
19 permitted on the property. It is my feeling that a  
20 substantial change is proposed. This property housed a  
21 number of limited hours family oriented businesses. It  
22 then sat unoccupied commercially for several years being  
23 only a residential rental.

24                 The Morans are proposing a highly regulated,  
25 highly restricted, very adult oriented business with

1 extended hours of operation, which is allowed in this  
2 zoning only through a special exception permit. Retail  
3 sales, goods and services as listed in 120.200, which is  
4 the C-1 commercial district, list a number of family  
5 friendly permitted uses, such as hospitals, offices,  
6 publicly owned uses like playgrounds, warehouses  
7 incidental to a primary building, accessory building in  
8 use, essential services, private solar energy uses,  
9 nursery and daycare, by special exception the liquor  
10 sales, gas station, public utility buildings, vehicle  
11 sales with additional restrictions, outdoor storage, and  
12 it also allows for sexually oriented businesses which  
13 would not apply here because they are not allowed to be  
14 adjacent to residential parcels, which your parcel is  
15 surrounded by.

16 All of these uses permitted or special  
17 exception need to be reviewed for screening, area  
18 setbacks and other elements to ensure that the abutting  
19 and surrounding properties are protected as written into  
20 the description of a C-1 District. Special use has  
21 impacts outside of allowed uses. The Township has the  
22 legal responsibility to determine if and how those  
23 impacts can be managed or mitigated for the safety,  
24 health and esthetics of the neighborhood and the  
25 population.



1           The Township and the ZBA I believe has not  
2 ruled that you cannot have a liquor store there. They  
3 have ruled that you cannot bypass the review and  
4 management process for which we are held legally  
5 responsible.

6           Do the Commissioners have other comments they  
7 would like to add?

8           KEITH URBAN: Yes, I would. I think from the  
9 beginning of this I have really honestly and earnestly  
10 tried to wrap my mind around the Applicant's position and  
11 tried to be very objective and even argued in my head  
12 both sides to try to be objective. There was a couple of  
13 points in my mind that I just couldn't understand the  
14 position being presented to me.

15           The most important of which was the position  
16 that retail is retail is retail. As a ZBA member looking  
17 at how a piece of property is to be used when it's in a  
18 non-normal condition, whether it be special exception or  
19 nonconforming legal, whatever it is, I feel that it is my  
20 duty to take into account the totalitarian circumstances  
21 of which is being put in front of me.

22           I cannot in my mind possibly associate that  
23 area being impacted to the same level as what a ceramic  
24 store or a dollar store would in comparison to a liquor  
25 store. I just cannot accept the argument that retail is

1 retail is retail. The sale of alcohol and the reasonable  
2 assumed hours that a liquor store would have to have in  
3 order to be successful on to its is compelling that we  
4 don't have apples for apples here. We don't even have  
5 apples for oranges. I'm very sorry.

6 I want to try and help every citizen that comes  
7 before me and be objective but I could not get and cannot  
8 get past that. Fundamentally speaking, hours of  
9 operation, frequency of traffic, necessary parking,  
10 necessary safety of coming in and out. I actually drove  
11 by there yesterday, just and stopped and looked at the  
12 property again. It's nonsupportive for that type of use  
13 and it is an expansion of -- it is an expansion in my  
14 mind.

15 So for those reasons, I'm still not convinced  
16 of your position. I apologize, and the reason why I  
17 apologize is because I really like giving exceptions when  
18 there's been evidence put before me that compels me to do  
19 that but I just don't have that. Relative to our  
20 definition of what our Zoning Ordinances state, I think  
21 it says -- I mean, I don't think it says. I know it says  
22 the word expansion. I see expansion, expansion of the  
23 use, and so that's where I'm at with this.

24 SHERYL GLUCHOWSKI: Other comments.

25 MARK REYNOLDS: I think I've said everything I

1 needed to say before.

2 SHERYL GLUCHOWSKI: All in favor of the motion  
3 as presented say aye.

4 CURT FLOWERS: Doesn't a resolution require --

5 MICHAEL HOMIER: Let's do a role call.

6 DAN BURNS: I would note that it's not -- is  
7 there a statement in the resolution of what the extent of  
8 the nonconforming aspects are though? Does it state that  
9 at any point, what hours are acceptable or what parking  
10 is acceptable as it sits?

11 SHERYL GLUCHOWSKI: I think that would be part  
12 of the review.

13 KEITH URBAN: That's part of your site plan.

14 DAN BURNS: It's just part of what the Court  
15 asked.

16 KEITH URBAN: Sir, I've gone round robin with  
17 you long enough. I'm tired of that. No more discussion.

18 DAN BURNS: So what is and what is not  
19 permitted --

20 KEITH URBAN: Did you not just understand what  
21 I said?

22 MICHAEL HOMIER: Mr. Burns, it's not a public  
23 hearing. You're out of order. You'll have an  
24 opportunity to comment in a minute when we hold public  
25 comment and then you can say what your piece says.

1 DAN BURNS: Okay.  
2 SHERYL GLUCHOWSKI: Keith Urban.  
3 KEITH URBAN: Yes.  
4 SHERYL GLUCHOWSKI: Steve Magura.  
5 STEPHEN MAGURA: Yes.  
6 SHERYL GLUCHOWSKI: Mark Reynolds.  
7 MARK REYNOLDS: Yes.  
8 SHERYL GLUCHOWSKI: Curt Flowers.  
9 CURT FLOWERS: Yes.  
10 SHERYL GLUCHOWSKI: Sheryl Gluchowski. Yes.

11 Motion carried unanimously. Let's get back to our  
12 agenda. Do we have public comment?

13 DAN BURNS: I'm Dan Burns. I'm here on behalf  
14 of Mr. Moran, who's the property owner of the property in  
15 question. My law office address is 29 Pearl Street in  
16 Grand Rapids, Michigan, Office Number 145, zip code  
17 49503. I just want to note a couple of things.

18 One, the Court was ordering you all to state  
19 what the extent of the nonconforming aspects are. I  
20 didn't hear in your resolution with regard to what is not  
21 allowed and what is considered an expansion but it does  
22 ask that you state the parameters of what is permitted on  
23 the Moran property, as well as what is not permitted, and  
24 there's been no statement of that.

25 Also with regard to the hours, I just want it

1 noted that we have not posted hours. We haven't even  
2 posted any proposed hours. If there were any limitations  
3 on hours, we would certainly consider those, if that was  
4 one of the aspects that was -- one of the problematic  
5 aspects of the property or the project.

6 As far as the statement though, we don't  
7 know -- that's part of what the dilemma is when there's  
8 been a failure to state what the extent of the  
9 nonconforming aspects are and that's why the Court  
10 required you to state what it is and what it is not  
11 because that's a good example of what would be  
12 problematic.

13 If you take an issue with the hours, we  
14 don't -- we aren't aware that there is an issue on the  
15 hours because we've never been told that that's one of  
16 the parameters that is allowed to continue underneath an  
17 acceptable format and an acceptable use.

18 Lastly, I just want to confirm that nobody is  
19 finding an expansion of the physical property itself.  
20 There's been no physical expansion of the property. This  
21 is just based on what would be the proposed use I think.  
22 So if I'm incorrect, I would appreciate anybody on the  
23 Board would set me straight.

24 I don't believe that you've stated though what  
25 the extent of the nonconforming use is and I don't

1 believe that there's been -- or I believe there has been  
2 a finding that there's no substantial expansion of the  
3 physical property itself or the buildings. Is that  
4 right?

5 MICHAEL HOMIER: The resolution speaks for  
6 itself, Dan. You'll get a copy of it. It's time for  
7 public comment, not debate.

8 DAN BURNS: Again I just asked the question --

9 MICHAEL HOMIER: You made your comment.

10 DAN BURNS: -- you as counsel can answer it.  
11 Don't keep cutting me off. It's public comment now and  
12 I'm allowing that during your time. That's fine.

13 MICHAEL HOMIER: We allow three minutes.

14 DAN BURNS: Let me finish my sentence and  
15 you're talking over me once again. We have a court  
16 reporter here and I'd appreciate it you being a lawyer  
17 would also know that there's a time and place for  
18 speaking over each other. This isn't it.

19 MICHAEL HOMIER: You have three minutes.  
20 You've well exceeded that. We've been very gracious of  
21 letting you continue but --

22 DAN BURNS: There was no limitation of time.

23 MICHAEL HOMIER: -- I don't have any problem  
24 with you continuing.

25 DAN BURNS: That's fine, but if you're going to

1 have a limitation on speaking, you should state that at  
2 the outset.

3 MICHAEL HOMIER: We have policies and  
4 procedures that limit it to three minutes. We don't have  
5 to state that at every meeting, unless you can cite me a  
6 law that says otherwise.

7 DAN BURNS: Cite me a policy.

8 KEITH URBAN: At the end of the day -- sir, at  
9 the end of the day --

10 MICHAEL HOMIER: Stop. Stop. Make your public  
11 comment and let's be done.

12 DAN BURNS: Cite me that policy.

13 MICHAEL HOMIER: We have a policy. I'll  
14 provide it to you if you'd like to.

15 DAN BURNS: No.

16 MICHAEL HOMIER: Are you finished? I just want  
17 to make sure you're finished.

18 DAN BURNS: As I was about to say when you once  
19 again talked over me, I'm talking with my client to find  
20 out whether I'm finished.

21 MICHAEL HOMIER: Okay.

22 SHERYL GLUCHOWSKI: In the meantime, are there  
23 any other comments?

24 WILLIAM MORAN: I'd like to say something.  
25 Bill Moran the owner of the property in question. My

1 question tonight is, you're working for the people of the  
2 State really. I don't understand why you have such nasty  
3 attitudes. You are just unbelievable in wanting to just  
4 see if you can be mean.

5 Now let's say nothing happens to this property.  
6 Did you improve anything? You know, I started -- I got a  
7 contract back in '14. If I had the money from that,  
8 maybe I could do some of the things to make it better for  
9 the community.

10 You did this the first time around when my wife  
11 was trying to get Stretch A Dollar in. You actually put  
12 her in bankruptcy, and it started out because we set the  
13 place up in July to open inventory and stuff and it was  
14 not a dollar store. Obviously, none of you have ever  
15 been in there because it was not a dollar store.

16 You're making an inference based on the name.  
17 You guys allowed her to open up one week before Christmas  
18 when she's all set up for most of it going back to  
19 school, the inventory. You were wrong then. You are  
20 wrong now. Thank you for your time.

21 SHERYL GLUCHOWSKI: Are there other comments?  
22 Okay. Other new business to come before the Board, I've  
23 been in some training sessions lately, one last night and  
24 one last month, and began to realize that we are under  
25 utilizing our liaison with the Planning Commission.



1           So I am going to institute asking Mark to speak  
2 on any goals, intents or other actions of the Planning  
3 Commission that he would see that would help keep us all  
4 in sync so we know what's important to them and what is  
5 going to be important to them in the future.

6           MARK REYNOLDS: Yes. I think there's a reason  
7 why there's persons to provide continuity between ZBA and  
8 the Planning Commission; likewise, there's a person  
9 required by the Michigan Planning Enabling Act for an  
10 elected official to be on the Planning Commission. I  
11 think the Township will probably well served if we talked  
12 a little more in sync.

13           So I'll go back I guess as far as the beginning  
14 of this year. The Planning Commission didn't meet in  
15 January and February. In March, we did, however, and  
16 immediately after the March meeting, I as the Secretary  
17 signed the first ever comprehensive master plan for our  
18 community that Russ led and we worked very hard on as a  
19 Commission for, I think where do we want to start the  
20 clock, between two and three years, and it's now in final  
21 form. It's posted on the Township's website and our  
22 clerk Deanna signed it in April.

23           What I did do was I -- as part of the master  
24 plan, we came up with some objectives and goals and I  
25 just gave you a summary of what that looks like. The

1 plan itself has seven sections and you can see what those  
2 sections are and the associated goals and objectives.

3 So now it's a matter of the Planning Commission  
4 beginning to work on some of these. So we didn't meet in  
5 January and February. In March, we penned the  
6 comprehensive master plan. We didn't meet in April.  
7 However, we did meet in May, and the only issue that  
8 came -- we had a couple of issues that came to the  
9 Commission.

10 One was the addition of a storage facility for  
11 the Kalamazoo Kennel Club, 44 by 48 feet, and we approved  
12 that, and we also discussed temporary single family  
13 dwellings looking at a Texas Township example. We  
14 decided that would be kind of a tricky to enforce so we  
15 didn't pursue any conversation after that, and here we  
16 are in June.

17 Last December, I was appointed to the South  
18 Central Michigan Planning Council and I'm a member at  
19 large for the Kalamazoo County. It's a four county  
20 planning council, and they're doing some neat things with  
21 the Upjohn Institute, the City of Kalamazoo, some other  
22 things. So there's another document here. I kind of  
23 framed up what I thought you might be interested in.

24 This was first introduced by Popular Science  
25 back in 2015 or '16. It also appeared on MLive in 2017

1 and then I learned about it just recently from the Upjohn  
2 Institute, but that's a depiction of where a good place  
3 is to live in 2100, and if you take a look where you see  
4 the hearts, that's where we live.

5 So we know that the world is changing and we  
6 know that Cooper Township is the fourth fastest growing  
7 township in Kalamazoo County. So I think it's important  
8 to continue to stay ahead of the game, have protective  
9 ordinances in play, have a solid master plan and  
10 executing the tenants of that plan for a lot of good  
11 reasons, but certainly, that picture drove a lot of that  
12 home for me.

13 Let me see, that's really I think all I have.  
14 I'll do a better job of trying to come up with some  
15 things to share but again it's been kind of light this  
16 year shy of the master plan. I'd encourage all of you to  
17 go on the website and take a look at it. It's quite a  
18 document and I'm proud to be part of all of that effort.

19 Does anybody have any questions about anything?

20 STEPHEN MAGURA: Where could we find the legend  
21 for this? Because the hearts I guess I understand but  
22 the other symbols --

23 MARK REYNOLDS: That's good. It's an  
24 interactive -- if you go to the website, the Popular  
25 Science website, Google Popular Science best places to

1 live in 2100, and you'll get that picture with some  
2 interaction to it. You move your cursor and it will give  
3 you some more information. So it's pretty nifty.

4 The suns represent drought. The rounding edges  
5 of our continent represent ocean coming up on land. The  
6 bugs represent just that. I think there's other, what is  
7 it, like little tornadoes or storms.

8 SHERYL GLUCHOWSKI: It looks like flames.

9 MARK REYNOLDS: Flames, you got fire, bugs,  
10 drought. So it's pretty nifty.

11 STEPHEN MAGURA: This whole place is  
12 unliveable.

13 MARK REYNOLDS: I think we can probably live in  
14 most places, but if you look at the sweet spot, the sweet  
15 spot is right under our feet, and more people are going  
16 to come. Thank you for that opportunity.

17 SHERYL GLUCHOWSKI: Yes, and thank you for this  
18 copy of the goals and objectives. It's going to be  
19 interesting reading.

20 MARK REYNOLDS: It's Section 6, isn't that  
21 right, Russ, under public participation in the goals and  
22 objectives under the master plan?

23 RUSS WICKLUND: Maybe five.

24 MARK REYNOLDS: Five. It's in there.

25 SHERYL GLUCHOWSKI: Does anyone have any other

1 business to come before the Board?

2 DAN BURNS: I just have to ask if I am going to  
3 get a copy of that resolution? Is that something I can  
4 get from you tonight?

5 MICHAEL HOMIER: Yes. I can give you them  
6 attached to the resolution, but it won't be a signed one.  
7 It will be a draft.

8 DAN BURNS: That's fine. I could have used  
9 these case references years ago, just so you all know.

10 MICHAEL HOMIER: I'm glad I could be helpful.

11 DAN BURNS: We'll see what they say.

12 SHERYL GLUCHOWSKI: I would entertain a motion  
13 to adjourn.

14 KEITH URBAN: I motion we adjourn.

15 STEPHEN MAGURA: Second.

16 SHERYL GLUCHOWSKI: All in favor say aye.

17 MARK REYNOLDS: Aye.

18 CURT FLOWERS: Aye.

19 SHERYL GLUCHOWSKI: Aye. All opposed. Meeting  
20 is adjourned.

21 (Meeting concluded at 6:13 p.m.)  
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23  
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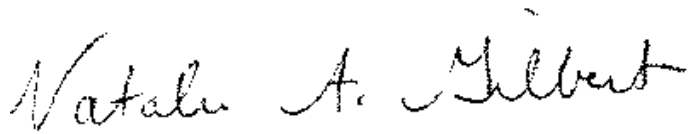
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I certify that this transcript, consisting of 36 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on June 21, 2018.

I also certify that I am not a relative or employee of or an attorney for a party; or a relative or employee of an attorney for a party; or financially interested in the action.

July 3, 2018



Natalie A. Gilbert, CSR-4607, RPR

Notary Public, Saginaw County, MI

My Commission Expires: 8-10-2020

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