

STERLING HEIGHTS ZONING BOARD OF APPEALS
REGULAR MEETING
CITY HALL
July 21, 2016

LOCATION: City Council Chambers, 40555 Utica Road, Sterling Heights, MI
SUBJECT: Minutes of the Regular Meeting of the Zoning Board of Appeals held July 21, 2016.

Mr. Graef called the meeting to order at 7:02 p.m.

Members present at roll call: Derek D'Angelo, David Graef, Stefano Militello,
Pashko Ujkic

Members absent at roll call: Dale Deming and Ray Washburn - Excused

Also in attendance: Chris McLeod, City Planner
Don DeNault, City Attorney

APPROVAL OF AGENDA

Motion by Mr. Militello, supported by Graef, to **APPROVE** the Agenda.

Ayes: Militello, Graef, Ujkic, D'Angelo

Nays: None

Absent: Deming and Washburn

Motion carried.

CORRESPONDENCE

Mr. McLeod stated he received correspondence from ZeerCo Development Corp, case PZBA16-0011, asking their case be postponed.

PZBA16-0017 - Harvinder Paul Singh

Requesting Board approval to allow for an amusement device center without providing food services - East side of Schoenherr between Canal Road and Hall Road in Section 01.

Property address: 43648 Schoenherr Road

Mr. D'Angelo asked petitioner to come forward to the podium.

Mr. McLeod gave an overview and stated provisions in the ordinance state an amusement device center within a shopping center have to have a food service as part of their overall delivery of services. He stated the tenant wishes to provide bagged goods, pre-prepared foods and drinks as well but no food preparation and service type atmosphere. The proposed operation will be open seven days a week, from 10 a.m. to 10 p.m. It will be a series of gaming stations within the tenant space. Mr. McLeod then displayed and described the site plan.

Mr. D'Angelo invited petitioner to come forward to the podium.

Harvinder Singh came to the podium. He stated there is not enough space to provide a food service. He stated he inquired with the Health Department about setting up a type of coffee stand but it does not meet the requirements.

Mr. D'Angelo asked what will be next to the business.

Mr. Singh stated there is a karate place, a Pizza Hut, on the south side is a café and on the north side is a "we buy gold" place.

Mr. D'Angelo asked if he was affiliated with any of the business in the shopping center.

Mr. Singh stated his wife owns Serene Beauty day spa which is located further down, in the center.

Mr. D'Angelo asked for any questions from the Board.

Mr. D'Angelo asked Mr. McLeod if this is similar to the case, Jack Pots. Mr. McLeod stated it is somewhat similar.

Mr. D'Angelo asked the petitioner what is the difference with his business to Jack Pots.

Mr. Singh stated there it will be similar but there will be different options for prizes.

Mr. D'Angelo asked if there was an age limit and if kids are allowed to play the games.

Mr. Singh stated you have to be 18. If younger than 18, you have to be supervised by an adult. The children under 18 may play the games.

Mr. D'Angelo asked Mr. McLeod if there were any state regulations to be aware of for this case.

Mr. McLeod stated as long as the child was being supervised, it would probably suffice.

Mr. Ujkic asked the petitioner if he currently has a lease for the space and for how long.

Mr. Singh stated he has a 3-year lease.

Mr. Ujkic asked Mr. McLeod if the case was approved, would it stay with the building and negate if the petitioner decides to move on.

Mr. McLeod stated variances go with the property so the variance would stay with the space that is being requested provided the use remained exactly the same as approved.

Mr. Ujkic asked Mr. D'Angelo to state to the petitioner there is not a full Board.

Mr. D'Angelo stated to Mr. Singh that there were only four board members present and all would have to vote in favor of the case.

Mr. D'Angelo asked Mr. McLeod what the history was for the ordinance for amusement device centers.

Mr. McLeod stated that typically with this type of provision, it is to provide a more family orientated place, a combination of uses, being food and entertainment.

Mr. DeNault agreed with Mr. McLeod and stated he thought it was possibly to prevent these types of places from becoming "hang-outs".

Mr. D'Angelo asked if there were any other questions for the petitioner. He then asked if the petition would like to request postponement because two board members were absent or move forward at this time.

Mr. Singh stated he would like to move forward.

Mr. D'Angelo asked for public participation. Being none, he closed public participation and asked the Board for any further comments. Being none, he called for a motion.

Motion by Mr. Graef, supported by Mr. Militello In the case of PZBA16-0017, Harvinder Paul Singh, 42648 Schoenherr, I move to **APPROVE** the variance with the following conditions:

- 1) The decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct, and that the conditions upon which the motion is based are forever maintained as

presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;

- 2) Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
- 3) A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;
- 4) All appropriate planning, building, and license approvals must be sought and obtained prior to occupancy.
- 5) The variance will be limited to the tenant space identified in the materials submitted by the Applicant.

This motion to approve is supported by the following findings of fact:

- 1) All of the facts and standards in the Zoning Ordinance for approving a non-use variance have been established and met.
- 2) The space being occupied by the proposed tenant is only 1,200 square feet and does not have sufficient space for the food service requirement set forth in the Zoning Ordinance.

Mr. D'Angelo asked for any further discussion. Being none, he called for a roll call vote.

Ayes: Graef, Militello, D'Angelo, Ujkic,

Nays: None

Absent: Deming and Washburn

Motion Carried

PZBA16-0018 - V & R Building Company (Art & Jakes)

Requesting Board approval for a reduction of the total number of required parking spaces - West side of Mound Road, south of M-59 in Section 05.

Property address: 44899 Mound Road

Mr. D'Angelo asked Mr. McLeod for an overview.

Mr. McLeod displayed the site plan and gave an overview of the proposal. He explained the applicant wants to enclose the patio area which would then require the space to be calculated for parking requirements. He noted that there is excess parking in the area (shopping center) if parking became an issue at certain times.

Mr. D'Angelo asked petitioner to come forward to the podium.

Victor Trpcevski, owner of Art & Jakes and V & R building company came forward.

Mr. Trpcevski stated the building will stay the same; they are looking to enclose patio area which is already there for bad weather and winter months.

Mr. D'Angelo asked for questions from the Board.

Mr. D'Angelo asked if they will have the same number of tables that are currently out on the patio.

Mr. Trpcevski stated yes, the same exact number. He stated the Fire Marshall stated they may have 283 people and they are set up for 236 seats.

Mr. D'Angelo asked how many Art & Jake's there are.

Mr. Trpcevski stated there are four in the area; one is branded as AJ's Pub.

Mr. D'Angelo asked Mr. McLeod who the parking, across the ring road, belongs to.

Mr. McLeod stated it is for the shopping center itself. Art & Jakes is on an outlot.

Mr. D'Angelo asked Mr. McLeod if there has been an agreement between the owners of the center parking and Art & Jakes.

Mr. McLeod stated there have been attempts made.

Mr. Trpcevski stated the owners of the center are from Texas and there have been problems trying to communicate with them. He also stated there are sidewalks in place to cross into the other parking areas. He stated again, everything will stay the same, it will just be enclosed.

Mr. D'Angelo asked what the adjoining properties are in the out lots next to Art & Jakes.

Mr. Trpcevski stated there is an Arby's next door and everything else is open.

Mr. D'Angelo stated it looked like there would be plenty of parking. He asked if there were any other questions from the Board. He stated to the petitioner that there were only four board members present and all would have to vote in favor of the proposal for it to pass. He then asked the petitioner if he would like to proceed.

Mr. Trpcevski stated he would like to proceed.

Mr. D'Angelo asked for public participation. Being none, he asked the Board for any other questions or a motion.

Motion by Mr. Militello, supported by Mr. Ujkic, in the case of PZBA16-0018, V & R Building Company (Art & Jakes), 44899 Mound Road, I move to **APPROVE** the variance for the necessary parking spaces with the following conditions:

- 1) The decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct, and that the conditions upon which the motion is based are forever maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;
- 2) Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
- 3) A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;
- 4) All appropriate building approvals are sought and obtained prior to construction enclosure of the patio space.

This motion to approve is supported by the following findings of fact:

- 1) All of the facts and standards in the Zoning Ordinance for approving a non-use variance have been established and met.

- 2) The patio and seating area already exist on site and the enclosure of the patio will not impact the use of the site as it currently exists.
- 3) The overall center has an abundance of parking that can be utilized for any overflow parking.

Mr. D'Angelo asked for any further discussion. Being none, he called for a roll call vote.

Ayes: Militello, Ujkic, D'Angelo, Graef
Nays: None
Absent: Deming and Washburn
Motion Carried

PZBA16-0019 - C & N Land Development, LLC

Requesting Board approval for a 40' variance to the required 75' rear yard setback-East side of **Van Dyke, between Willesdon Square and 16 ½ Mile Road in Section 22.**
Property address: 38190 Van Dyke

Mr. D'Angelo asked Mr. McLeod for an overview.

Mr. McLeod displayed the site plan and gave an overview of the proposal. Their previous proposal was denied by the ZBA. The applicant has revised the application to move the building forward, providing a larger setback as well as to provide additional landscaping along the rear property line.

Mr. D'Angelo asked the petitioner to come forward.

The petitioner gave an overview of why the building is needed. He also explained his client has tried to minimize noise by keeping all doors to the building closed. He also described the landscaping they will put along the back of the property line.

Mr. D'Angelo asked the Board for any questions.

Mr. Graef asked Mr. McLeod what the distance for the previous variance request was. He stated that are currently asking for 40 feet and the previous request was for 50 feet.

Mr. McLeod stated the variance request is different by 10 feet.

Mr. Graef asked Mr. McLeod if the Arborvitae trees are far enough away from the sewage line and easement so it does not cause any problems.

Mr. McLeod stated with the additional setback request, the Arborvitaes can be planted outside of the sewer easement. He stated if the proposal is approved, they would coordinate with engineering to make sure they do not encroach on any easements within that area.

Mr. D'Angelo asked the petitioner if the building is 21 feet high and why does it need to be that height. He also asked if that is a normal height for an industrial building.

The petition stated he believed the building was 21 feet. He thought it was a standard type building.

Mr. D'Angelo asked the petitioner what was the height of the store front building.

The petitioner conferred with his client and he stated the store front is 19 ½ feet.

Mr. D'Angelo asked the petitioner if there will be a noise issue with the new building. He asked the petitioner to explain the daily operation of the building.

The petitioner stated when the client asked for the first variance, they were not aware of the complaints the neighbors had. He stated since the last variance proposal, they have

closed the doors to the building to soften the noise emanating from the building. They have also worked out the issue with semi-trailers being in the back lot overnight. The semi-trailers will come approximately once or twice a week to drop off or pick up tires. He stated there will be no operational noise coming from the proposed building. It will strictly be used for storage.

Mr. D'Angelo stated the appearance of the property is getting better as they are learning the expectations of Sterling Heights.

The petitioner agreed. He stated his conversations with his client were to get along with the neighbors and with the plantings it will minimize the noise factor.

Mr. D'Angelo asked the petitioner what the hours were for dropping off and picking up tires.

The petitioner stated the hours of operation are Monday - Saturday, 8:30 a.m. - 7:00 p.m., closed on Sunday. He stated the drop/pick up times could be between 9:00 a.m. and 4 p.m.

Mr. D'Angelo asked the Board for any other questions. Being none, he asked for public participation.

Bill Peters came forward. He stated the doors are always open and noise is still a problem. He stated concern for the landscaping taking time to grow or die off. He stated 10 feet doesn't make a difference, he still doesn't want to look at a building through his backyard.

Mr. D'Angelo asked for any further comments from the public. Being none, he closed public participation.

Mr. D'Angelo stated the doors should be closed at all times and not sure that is what is happening.

The petitioner stated he would stress to his client to keep doors closed for noise reduction. He also stated if the variance was granted they would have to maintain the landscaping and if any were to die off, they would have to be replaced.

Mr. D'Angelo asked how tall the Arborvitaes will be when planted.

The petitioner stated he thought having to go through the Planning Commission for site plan approval they would have a minimum standard. He also stated there are no other plans for the building, just storage.

Mr. D'Angelo asked why the building has to be 21 feet.

The petitioner stated they were trying to keep it consistent with the existing building.

Mr. D'Angelo asked if it will look awkward from Van Dyke with the back storage building being taller than the store front building.

Mr. Ujkic asked if they will be using HiLos or will they be hand carrying the tires.

The petitioner stated most will be hand carried.

Mr. Ujkic asked if there will be any roof top unit or anything on top of the building.

The petitioner stated nothing will be on the top of the building.

Mr. Ujkic asked the petitioner if the parking on the side was there previously or if they added it.

The petitioner stated it is replacing parking that will be lost if building is there.

Mr. Ujkic stated he appreciated the hardship the client has but he also respects the neighbors have a problem with the noise. He stated to the petitioner that it is important for his client to be considerate of the neighbors' concerns.

The petitioner stated he has stressed to his client the importance of working with the neighbors. He stated he will again state the doors should stay closed and his clients will have to convey to the tenants.

Mr. Ujkic asked if there will be anything going on behind the trees that would be planted, i.e. extra storage, etc.

The petitioner stated no and there is already sod there.

Mr. D'Angelo stated he would like the storage building 19 feet high as is the store front building. He also asked if they could plant the Arborvitae's closer together.

The petitioner stated they could increase the density of the trees and have on record to be closer than 10 feet.

The petitioner conferred with his client and stated they do not have a problem bringing the height of the building down to 19 feet to be consistent with the store front building.

Mr. D'Angelo asked for any further questions from the board. Being none, he asked the petitioner if he would like to move forward with having only four board members present.

The petitioner stated yes.

Motion by Mr. Militello, supported by Mr. Ujkic, in the case of PZBA16-0019, C&N Land Development LLC, 38190 Van Dyke, I move to **APPROVE** the variance with the following conditions:

- 1) That the decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct, and that the conditions upon which the motion is based are forever maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;
- 2) Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
- 3) A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;
- 4) That appropriate site plan, engineering, fire department, and building approvals are sought and obtained prior to construction and that additional site plan requirements may arise as a part of such review;
- 5) That no outdoor storage shall occur on the site and that all materials which may be outside on a daily basis be brought into either the main building or storage building at the close of business each day;
- 6) That the building and design match that of the main building on site;
- 7) That a dumpster enclosure be provided meeting the requirements of the City of Sterling Heights;

- 8) That the required street trees be planted along the Van Dyke Road frontage;
- 9) The storage building may only be accessed between normal business hours, 8:30 a.m. and 7:00 p.m.;
- 10) Deliveries to the site may only occur between the hours of 9:00 am and 4:00 pm.
- 11) That the Arborvitae trees be planted seven feet apart or as directed by the Planning Commission.

This motion to approve is supported by the following findings of fact:

- 1) All of the facts and standards in the Zoning Ordinance for approving a non-use variance have been established and met.
- 2) The variance will minimize the impact of the use on the adjacent residential zoning by providing an enclosed space for storage and inventory.

Mr. D'Angelo asked for discussion on the motion.

Mr. McLeod asked the motion maker if he would consider broadening stipulation number 4, to include the fire departments approval.

Motion by Mr. Militello, supported by Mr. Ujkic to AMEND number 4 to include the fire departments approval.

Mr. D'Angelo asked for a roll call vote.

Ayes: Militello, Ujkic, D'Angelo, Graef
Nays: None
Absent: Deming and Washburn
Motion Carried

PZBA16-0011 - ZeerCo Management Corporation

Requesting Board approval for the following: 1) a use variance to allow for a C-3 use (drive through restaurant) in the O-1 Zoning District 2) a parking variance to the number of required spaces; 3) a variance to the side and rear yard setback, 4) a variance to the required distance from a drive through to a residential district, 5) a variance to the required minimum number of required frontage trees, 6) a variance to the required front yard setback for the installation of new gas pumps, canopy and parking 7) a variance to the required minimum screening requirements between sites - West side of Mound Road, south side of Metropolitan Parkway in Section 29.

Property address: 36945 Mound Road

Mr. McLeod stated the applicant requested a postponement to the August 25th meeting.

Mr. D'Angelo asked for a motion.

Motion by Mr. Militello, supported by Mr. Graef, in the case of PZBA16-0011, ZeerCo Development Corp., Mike Zeer, 36945 Mound, I move to POSTPONE the request to the next regular meeting (August 25th).

Ayes: Militello, Graef, Ujkic, D'Angelo
Nays: None.
Absent: Deming and Washburn
Motion Carried

PZBA16-0012 - Metropolitan Concrete

Requesting Board approval for a front yard setback variance to allow parking within the required front yard setback - North side of Metropolitan Parkway between Van Dyke and Mound Road in Section 21.

Property address: 6581 Metropolitan Parkway

Mr. McLeod gave an overview stating at last month's meeting the ZBA granted the variance for the side yard setback for the buildings along the western property line. The applicant postponed action on the front yard setback in regards to the parking. The ZBA requested additional input and discussion for alternatives for parking. The applicant provided a series of photos explaining what goes on at the site.

Mr. D'Angelo asked the petitioner to come forward to the podium.

Patty Shay, General Manager for Metropolitan Concrete Corp, Metropolitan Concrete Products, and Bugli Investments, came forward to the podium. She stated these three businesses operate out of the location.

Ms. Shay gave an overview of the daily operations of the company. She displayed pictures of the renovations that are taking place to add office space as the company is growing. She also stated with the renovations, their goal is to make the overall site look more appealing. She stated with the company growing, they desperately need the extra parking spaces in front for the store itself.

Mr. Graef stated he has driven by Metropolitan Concrete many times and has seen the need for parking at the site. Mr. Militello agreed.

Mr. D'Angelo asked Mr. McLeod how much setback the applicant is asking for.

Mr. McLeod stated a 30 foot variance. The required greenbelt is 35 ft., the applicant is proposing five. He explained this started when the company added a sewer line and there was no parking in the front yard. It was all greenbelt.

Ms. Shay stated at that time they had an arrangement with the neighbor to utilize their parking, but that changed and is currently unavailable to them. She explained most employees park in the back; there are a few employees that park in front. They are in need of the parking mostly for customers.

Mr. D'Angelo asked for any other questions from the Board. Being none, he opened up public participation. Being none, he asked the Board for any further discussion or a motion.

Motion by Mr. Graef, supported by Mr. Militello in the case of PZBA16-0012, Leonard Bugli, 6581 Metropolitan Parkway, I move to **APPROVE**

The requested front yard setback variance to allow a parking lot with the following conditions:

- 1) That the decision of the Board will remain valid and in force as long as the facts and information presented to the Board in Public Hearing are found to be correct, and that the conditions upon which the motion is based are forever maintained as presented to the Board. The petitioner agrees to abide by and comply with all the ordinances of the City of Sterling Heights and the regulations of every lawful agency or governing authority now or hereafter in force;
- 2) Notice of the approval of the variance shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to file this notice shall serve as grounds to revoke the variance;
- 3) A Hold Harmless Agreement, in favor of the City of Sterling Heights, shall be delivered to the City Clerk's office within 60 days after the approval date of the applicable meeting minutes for recording with the Macomb County Register of Deeds. Failure to follow this agreement shall serve as grounds to revoke the variance;

- 4) That appropriate site plan, engineering, and building approvals shall be sought and obtained prior to any new construction and in relation to the existing buildings which have no valid permits, and that additional site plan requirements may arise as a part of such review;
- 5) That additional low level, hedge type plantings be provided between the proposed deciduous trees along the property frontage.

This motion to approve is supported by the following findings of fact:

- 1) The applicant has provided landscaping between the proposed parking lot and the front property line as well as between the proposed parking lot and the front facade of the building.
- 2) The applicant is providing additional improved planting area and site improvements beyond those previously developed on the site.
- 3) Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, lot coverage, density, or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.
- 4) The grant of a variance will do substantial justice to the applicant as well as to other property owners in the district and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.
- 5) The plight of the applicant is due to unique circumstances of the property.
- 6) The problem is not self-created.
- 7) The spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.
- 8) This is a highly industrial area, being located on a service drive and an elevation change with Metropolitan Parkway going above the applicant's site.

Mr. D'Angelo stated he would like to add number 8 to the motion.

Motion to AMEND by Mr. Graef, supported by Mr. Militello to add number 8.

Mr. D'Angelo asked for any discussion on the motion. Being none, he called for a roll call vote.

Ayes: Graef, Militello, Ujkic, D'Angelo
Nays: None
Absent: Deming and Washburn
Abstained: None
Motion Carried

APPROVAL OF MINUTES

Motion by Mr. Militello, supported by Mr. Graef to **APPROVE** minutes for June 23, 2016 meeting.

Ayes: Militello, Graef, Ujkic
Nays: None
Absent: Deming and Washburn
Abstained: D'Angelo
Motion Carried

NEW BUSINESS

None

OLD BUSINESS

None

PUBLIC PARTICIPATION

None

MOTION TO ADJOURN

Motion by Mr. Militello, supported by Mr. Graef, to adjourn.

Ayes: Militello, Graef, Ujkic, D'Angelo

Nays: None

Absent: Deming and Washburn

Motion Passed

Meeting adjourned at 8:24 P.M.

Respectfully submitted,

Derek B. D'Angelo, Chairman
Zoning Board of Appeals