

ACME TOWNSHIP
Zoning Board of Appeals
January 12, 2006

Thursday, 7:30 p.m.
Acme Township Hall
Acme, Michigan

Meeting called to Order at 7:30 p.m.

Members present: J. Kuncaitis (Chair), D. Kipley, D. Krause, D. Smith

Members excused: L. Belcher, P. Collins

Staff present: J. Hull, Zoning Administrator
S. Corpe, Township Manager/Recording Secretary
K. Zopf, Township Counsel

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** The order of the hearings was changed so that the Cherry Country Fruitworks hearing would be held first.
2. **Correspondence:** None
3. **Reports:** None
4. **Hearings:**
 - a) **Public hearing for Meijer, Inc., requesting variances of Section 7.4, Signs, which regulates signage in Acme Township:** Kuncaitis read the published public hearing notice into the record. Mr. Tim Stoecker, legal counsel, Mr. Scott Nowakowski, Meijer, Inc. and Mr. Chris DeGood, Gourdie Fraser Associates, were present in support of the application.

Mr. Stoecker displayed the proposed site plan for the Lautner Commons project, noting how the property sits at the southeast corner of M-72 East and Lautner Road. He noted the location of wetlands areas on the north side of the property and the proposed gas station/convenience store near the intersection. He stated that Gourdie Fraser has performed some visual analysis that has resulted in a reduction from the original extent of signage variances requested.

Mr. Stoecker stated that the distance from the traveled part of the M-72 right-of-way and the nearest portion of the main store is approximately 670'. From the centerline the distance is approximately 850'. The store siting and orientation has been done in relation to and consideration of existing regulated wetlands nearer M-72 and otherwise dispersed throughout the site. Mr. Stoecker asserted that Meijer is providing a greater level of created wetlands in exchange for mitigated wetlands areas than is required by the DEQ. The store is several football field lengths from the roadway, and the applicant feels it would be difficult to adequately read a wall sign that was the maximum 100 sq. ft. size permitted by the Zoning Ordinance. He stated that the proposed siting of the store was arrived at through discussion with the Planning Commission and places the store

significantly farther away from M-72 and Lautner Roads that would normally occur (100-200').

There are nine potential outlots which might be individually sold and have individual signage. If this were to occur, a monument sign containing their names would be non-conforming off-site signage. Mr. Stoepker stated that the request to place signage on two key monument signs is an attempt to reduce the potential overall number and total square footage of signs.

Meijer is requesting logo wall signage of approximately 300' and 640', plus additional signage for some licensees with locations within the store such as a bank or Starbucks and directional signage for the pharmacy. They have created a video presentation that attempts to demonstrate the view from a car traveling down M-72 at 45 mph (slowed down due to the traffic light), first at the maximum 100 sq. ft. allowable wall sign size and one at the proposed size. Mr. Stoepker stated that the landscaping shown in the video model comports with the proposed landscaping plan.

Kuncaitis asked how the proposed sign for the front of the store compares in size to the sign on the front of the Garfield Township store. Mr. Nowakowski stated that the proposed signs are slightly smaller. Kipley asked for a comparison with the signage on the Cadillac store; Mr. Nowakowski felt they would be comparable.

Mr. Stoepker noted that the ordinance generally allows for signage no larger than 20% of a wall elevation or 100 sq. ft., whichever is smaller. His calculations indicate that 20% of the north wall area would be 1,700 sq. ft., and noted that the requested sign size is significantly smaller. 20% of the west wall area would have been over 6,000 sq. ft. He asserted that the requested signs will be no more than about 4-5% of the north wall area and a similar amount for the west elevation. He asserted that signage of the required maximum sizes would be invisible for all practical purposes.

Mr. Stoepker read from the Sign Ordinance and stated that the signage is designed to describe the services available on the premises, with the exception of the "Welcome" signs over the entrance doorways which seem like a friendly touch to him. Without the variances requested he feels that the identification purpose for signage set forth in the ordinance cannot be accomplished. He stated that the ordinance contemplated building construction 100-200' from the right-of-way and not approximately 800' as proposed. In effect he believes the applicant will be penalized for working with the Planning Commission to site the building. Name identification is important, and drivers need enough time to react and maneuver safely to access the store. He feels the larger sign sizes therefore promote the purposes of the ordinance and that they would not diminish public health, safety and welfare. Mr. Stoepker asserted that the unique siting of the store relative to what one might expect customarily in terms of setbacks is what creates a unique situation for this applicant. The application relates only to the property in question and uses on it, and the property is a legal lot of record.

Turning to the Special Conditions, Mr. Stoepker stated that a practical difficulty exists in the store being properly and safely identified due to the relationship of

the store to the property and roadway. He stated that the only other way around this situation would be to move the store up close to M-72 without regard for the wetlands. He also stated that the variance is needed to preserve the substantial property right of having the property identified as is described to be the purpose of the sign ordinance. Other stores in the community are closer to the right of way and have the benefit of being able to be clearly identified with smaller signage. The applicant wants visitors to the community to be able to find and identify the store, not just local residents who are well aware of the store location.

Mr. Stoepker turned to the requested variance for the service station signage. There is a proposed pricing block for unleaded gasoline with red LED lighting that can be used to change the pricing electronically. This should produce less light than an internally-lit sign with a light background and dark letter panels. There would be two pricing signs total on the canopy. The LED bulb portions are exposed, and exposed lighting elements are generally prohibited. Mr. Stoepker noted that the bulbs are tinted, and likened this to hiding a bulb behind a tinted sign face. He feels that this meets the intent of the ordinance to limit the amount of light shed and therefore does not require a variance. He asserted that the proposed lighting fixture will not have an adverse effect on public health, safety and welfare or create a nuisance. Kuncaitis stated that a similar type of sign displaying time and date exists on S. Airport Road at a contractor's office. During the daytime it seems fine, but at night he feels it sheds an unacceptable level of glare. Mr. Stoepker stated that the sign size has been reduced from what would be standard and that the applicant has done everything possible to reduce the light impact.

Discussion continued with the proposed monument signs. Originally the applicant was requesting 27' high signs, but after further analysis has reduced the requested height to the permissible 20' maximum. The proposed monument for Lautner Road is smaller than the one for M-72, and would say "Lautner Commons" and "Meijer". The one on M-72 is requested to have space to display the names of the outlot occupants. Mr. Stoepker reiterated his statement that the buildings would have been located closer to M-72 had it not been for the wetlands. He stated that if the outlots are sold off individually the total amount of signage if each individual lot receives a sign would be greater than what the applicant is requesting on one consolidated sign. The applicant would agree to place a restriction against any other monument signs on the site. Mr. Stoepker stated that placing the names of the occupants would be similar to situations that exist on freestanding signs elsewhere in the township where each occupant has a place on the monument sign as well as a visible wall sign. Mr. Stoepker recognized that the request could create a non-conforming situation where off-site signage exists and that they are asking both to list the names in a way not generally permissible for planned shopping centers and in excess of the standard monument sign allowable size of 32 sq. ft. He asserted that the request will not negatively impact public health, safety and welfare, and the applicant is offering deed restrictions against additional freestanding signage. Concerning Special Conditions, he asserted that the unique hardship of the placement of the stores relative to the wetlands, open space and distance from rights-of-way exist for the monument signs as well as for the wall signage.

Kuncaitis noted the larger monument sign would be 160 sq. ft. with the area of the pedestal subtracted, and the smaller sign would be 70 sq. ft. He observed that the lowest panel would not have signage printed on it, so it could be subtracted from the actual sign face area.

Krause asked what the relative distances of the west and north elevations are from the roadways. The west elevation of the store is about 900' from Lautner Road and the north elevation is about 670' from the edge of the M-72 right-of-way and somewhat over 800' from the centerline. The sign on the Lautner Road sign would be 640 sq. ft. and the north side sign would be 360 sq. ft. Mr. Stoepker stated that this is because the Lautner Road side of the building is larger, and the sign on that elevation, which is centered on the building, is farther from M-72 than the sign on the north side. The north side sign will not be visible to eastbound M-72 traffic whereas the west side sign would be. In both cases the proposed signs are about 5% of the size of their respective wall areas. Mr. Nowakowski stated that the proposed store is about twice as far away from M-72 as the Garfield Township store is from US 31, and that similar conditions obtain in Cadillac.

Kuncaitis asked how the proposed sign size calculation was derived. Mr. DeGood stated that the area was calculated by creating a polygon around the outlines of the letters as a unit (traveling along the top of the "M" and "e", extending upwards around the dots for the "i" and "j", coming back tight to the top of the "ers", and behaving similarly around the bottom of the "j" on the bottom side.

Smith stated that the township must adhere to the ordinance as it exists today, but his feeling is that the ordinance does not really seem to fit a planned shopping center. Perhaps the ordinance should be amended to create a set of reasonable conditions for very large scale developments. Any decision made would set a precedent for other large scale developments to come. Granting variances of the significant sizes requested could leave the action open to more than a little question.

Hull distributed documentation from the Acme Village files demonstrating that a permit was granted to permit construction of monument signs identifying the that development, but only under the condition that no individual occupants be identified on those monument signs.

Kuncaitis feels that it would be most appropriate to have the monument signs considered as part of the site plan by the Planning Commission. He also felt that it would be extremely hard to justify and defend variances of approximately 700% for the wall signage. Mr. Stoepker again asserted that this situation is entirely different than any other the township is likely to encounter because of the placement of the buildings much farther back than the minimum setback, and that granting the variance would not set a negative precedent. Smith stated that he might support an ordinance amendment that would allow wall signage sizes to be variable depending on how far set back a building is.

Krause feels that the situation is largely caused by the Planning Commission action to recommend the building location as it is. He did say that he doesn't

recall seeing a sign package submitted to the Planning Commission. Kuncaitis asked if the Planning Commission does review signage plans; Hull stated that they generally review placement but sign particulars are reviewed administratively. Corpe observed that the Grand Traverse Resort signage plan is not what would otherwise be "standard", but this is how sign plans within Planned Unit Developments were approved, as part of the Special Use Permit process.

Public Hearing opened at 8:56 p.m.

Paul Rundhaug, 3733 Bunker Hill Road, stated that he has come to many meetings where developments such as K-Mart requested sign variances. All have been held to the letter of the ordinance. The requested variance is many times the permissible size. He stated that Meijer could not have built along the highway on this particular piece of land.

Lewis Griffith, 5181 Lautner Road, stated that this is a public hearing and was advertised in the paper. If there was general public concern about the proposed variance, the public would be here. He watched the simulation of driving past the site at 45 mph; if the signs are the size permitted by the ordinance it would be impossible to concentrate on traffic safely and still identify the site.

Steve Smith, Village at Grand Traverse, stated that he has been present at the Planning Commission meetings and agreed that they asked the applicant to have the building as far back from M-72 and Lautner Road as possible. Ignoring this would be a disservice to Meijer.

Ann Rundhaug, 3733 Bunker Hill Road, can understand the need to consider ordinance amendments. She wonders if the signs will seem as huge as a drive-in theater screen to people once they are in the site.

Hull displayed the originally proposed Meijer site plan. He demonstrated that Meijer had always proposed to have their building in relatively the same place that it is today, and that the Planning Commission has not had a significant impact on building placement.

Corpe observed that there is another property in the township where the main building is set back significantly more than the minimum from the road right-of-way: the K-Mart. Mr. Stoepker asserted that they must have received a variance, as they measured this sign and found it bigger than the standards. Mr. Rundhaug stated that when the store became a "Big K-Mart" the original wall sign was replaced with a much larger one. He stated that he brought this to Sherrin Hood's attention when she was the Zoning Administrator, and that Ms. Hood said there was no reasonable way to effectively measure the sign. Corpe indicated that current staff would follow-up on this issue.

Krause asked why the proposed monument signs could mention only "Lautner Commons" if the wall sign sizes are being increased specifically to make them visible from the roadway. Perhaps the monument signs would then not be needed at all. Conversely, perhaps on one elevation the wall sign could be larger but there would be no monument, and on the other the wall sign could be smaller and there would be a monument. Krause feels that the proposed wall size sign

might be proportional to the wall face, but in an absolute sense is overkill with letters approximately 11' high. Mr. Nowakowski stated that they want their signage to be visible from The Village at Grand Traverse, if it develops. They want their sign to be visible to people within The Village development.

Kuncaitis has expressed the frustration of trying to find a restaurant that is within a development but has no signage along the roadway. He feels that one central monument as a tradeoff for many monuments for each outlot is a good trade. Hull stated that there is nothing in the ordinance that suggests that a future outlot owner, as part of a planned shopping center, has a right to put up a monument sign in the same way that the owner of an individual lot would. Because they are part of the planned shopping center they are subject to a somewhat different circumstance.

Corpe observed that the concept of breaking off outlots into separate ownerships may also prove problematical due to the definitions in the Zoning Ordinance. The ordinance definition of "planned shopping center" includes "development of one or more buildings *on a single site...*" (emphasis added), and Section 8.12, Planned Shopping Centers refers to the "owner or owners of a *tract of land...*" (emphasis added). Zopf agreed that one tract is land under one ownership, whether that one ownership includes one or more entities. But is under one ownership rather than many.

Mr. Stoecker stated that Acme Plaza has a freestanding sign that identifies each tenant; Corpe noted that the entire sign identifying the development and the component parts is still only 32 sq. ft., the maximum size allowed. Mr. Stoecker also mentioned again the concept of having signage that would be visible from the high-speed roadway for wayfinding ease and safety, a concept which is a concern for Krause and Kuncaitis. Krause observed that there is a very large freestanding sign near the gas station at the Garfield Township store that is not proposed here.

Mrs. Rundhaug asked how the gas station prices would be posted; Mr. Stoecker replied that it would be on the gas station canopy rather than freestanding, and only one grade of gasoline.

Smith believes that the signage plan should be reviewed by the Planning Commission and a recommendation made to the Board of Trustees. Corpe read from Section 8.12 of the ordinance, which indicates that all signage within a Planned Shopping Center must conform to the sign ordinance; this does not seem to leave room for the Planning Commission to recommend approval of a signage plan that deviates from the requirements. An ordinance amendment would take at least four months, which would be a problem for the applicant. Zopf noted that Section 5.3.3 of the Ordinance sets forth for the ZBA the conditions under which it may grant a variance. She noted that Basic Condition D is that a variance cannot be granted in a situation so common or recurrent that a general rule would be reasonable practical. Hull does not believe this condition has been satisfied if it is possible to have a large-scale development far from the road. Mr. Stoecker stated that their variance request is not based on the size of the development but on the size of the setbacks. He asserted that the sign ordinance is predicated on a maximum setback from the road of 100-200'; Corpe felt that

the ordinance is predicated on this being a minimum setback but not necessarily a maximum, as is certainly demonstrated by K-Mart.

Mr. Griffith stated that he has never seen a situation where the ZBA referred a variance matter back to the Planning Commission, and that the ZBA must make a decision. Kuncaitis stated that the ZBA is doing its best to make a careful decision which seems to be the first of its kind in the township.

Kuncaitis observed that Hull's staff report deems that 3 Basic Conditions have not been met. He feels comfortable ruling on two of them, but feels there is a definite issue with the third. He is leaning towards a need for direction from the Board and Planning Commission and an ordinance amendment that adequately addresses the distinction between this situation and others that now or may in the future exist in the township.

Smith noted that LochenHeath asked for variances to allow both multiple freestanding signs and ones that were 55 sq. ft. rather than 32 sq. ft. The sign sizes were ultimately brought down to 32 sq. ft. Kuncaitis observed that this is a gated, private community, as opposed to a busy public shopping center. Smith feels strongly that the variance can't be approved when Basic Condition D has not been met. In his opinion there should be an ordinance amendment that provides for reasonable rules for safe and effective signage for large scale shopping centers. He recommends tabling the application until further direction from the Planning Commission and Board can be sought. Hull noted that the Board of Trustees sent the application back to the Planning Commission to have a number of outstanding issues finalized, but indicated a desire to have these matters concluded within 30-60 days. Mr. Stoepker stated that it is his client's position that the Board did not have the legal authority to remand the matter to the Planning Commission, which didn't ask to review a sign package that he believes they knew to exist. Corpe observed that the ZBA is bound by the Basic and Special Conditions and not by the Planning Commission's desires. Kuncaitis stated that due to the novel nature of the situation he would tend to think that all Basic Conditions are met. Krause recommended that the Planning Commission be asked to consider an ordinance amendment. Zopf noted that if this is done, in effect the ZBA has stated that the condition is so recurrent that an ordinance is warranted and therefore a Basic Condition has not been met and granting a variance would be improper. She also quoted from Mr. Stoepker's memo, page 3 indicating that developments of this nature because of their nature require a certain type of signage consideration. Hull observed that the Basic Condition discusses a situation that is "general or recurrent" (emphasis added). Kuncaitis noted that the first Meijer application was made in 2000, and in five years there has been no perceived need for an ordinance amendment. Krause stated that even though he's been involved in this application process, he literally never considered the idea that the signage might be a problem and he suspects that nobody else on the Planning Commission did either.

Kuncaitis asked if anyone would have an issue with the gas station canopy signage; nobody appeared to. He asked if anyone had concerns about the proposed monument signs; nobody appeared to. The question would then remain as to what to do about the wall signage. Smith believes that it would be beneficial to have written legal advice regarding how this situation ought to be

approached. He feels certain that there will be future similar situations regarding development size and/or setback and that it would be beneficial to have rules that allow different sizes of wall signage accordingly. Mr. Stoepler believes that it would be inappropriate to have the attorney advise the ZBA as to what decision they should make rather than on the requirements of the law. Smith stated that he cannot recommend such a large variance, but does believe the problem can be resolved by other means. Hull stated he would be glad to ask legal counsel to provide the ZBA with an analysis of the law as it is applicable to the decision options available. He stated regret that some of the information provided by the applicant only arrived yesterday with insufficient time for the township's legal counsel to evaluate it. Zopf stated that she could provide a memo within a week or so. Mr. Stoepler stated again that he felt this was an inappropriate direction to take. Kuncaitis stated that requesting a 600% variance is unlikely to yield a positive outcome. He suggested that if the Planning Commission is willing to consider an ordinance amendment about sign sizes, this would be the route adopted. If the Planning Commission does not agree that the need is so general or recurring as to indicate an amendment, then the ZBA would proceed with variance deliberations.

Public Hearing recessed at 9:54 p.m.

Motion by Smith to table consideration of the variance request until legal counsel is provided and until the Planning Commission provides an indication as to whether the condition is so general or recurrent that formulation of an ordinance is warranted or alternatively that the situation is not general or recurrent and variance consideration is warranted.

There was discussion about precisely what the ZBA is seeking from the Planning Commission. It appeared that they were seeking validation of whether or not a variance of the magnitude requested is acceptable to the community. Corpe noted that this would not be forthcoming just from knowing whether the Commission is willing to consider a sign ordinance amendment; until the amendment was actually constructed the ZBA would not know what magnitude was acceptable. Zopf asked the applicant how long the construction process would take, implying that the construction process itself would allow time for the signage issue to be worked out. Mr. Nowakowski indicated that store construction cannot proceed prior to an acceptable signage package being in place. Corpe asked for verification if this meant that an inability to gain significant signage size might actually prevent store construction; Mr. Nowakowski reiterated his statement that construction cannot proceed prior to an acceptable signage package being approved.

Motion failed for lack of support.

There was discussion about how the Basic and Special Conditions have or have not been met relative to the variance application. Hull indicated a point of view that three Basic Conditions are not met. The ZBA opined that Basic Condition E has been met due to Hull's stance on the conditions under which monument signs are and are not permissible on the property and/or relative to the outlots. Mr. Stoepler stated an opinion that Basic Condition D has been met because the need is unique to the site due to the requirements placed on site design by the

Planning Commission. Hull reasserted that the building has not been moved significantly by the Planning Commission as opposed to the original siting proposed by the applicant. The applicant argued that they could have had the building up close to the wetlands but that they acceded to the township's desire to leave a significant buffer around them and area of open space on the site. Discussing Basic Condition A, Mr. Stoepker asserted that the variance would not be contrary to public interest. Hull read his staff report comments in this regard. Kipley read from the statement of purpose of the ordinance, which he finds does not refer to signs at all; therefore he finds that the condition has been met. Smith disagreed.

Krause felt that Special Condition A had been met, and Kipley concurred. They found a practical difficulty that a smaller sign could not be read while traveling on M-72. Smith reiterated his desire for some feedback from the Planning Commission as to what generally acceptable sign sizes and variances would be. Kuncaitis noted that this can still occur; it just would be subsequent to this hearing rather than affecting it.

Motion by Krause, support by Kipley to grant the requested variances, all Basic Conditions and Special Condition A having been met.

Smith feels that it would be little to ask for a one month tabling to enable further input to be received.

Kuncaitis stated that he is abstaining from any decision relative to Meijer Inc. The company he works for sells to a wholesaler which in turn sells product to Meijer. He considers this a grey area where conflict of interest is concerned, and this matter seems to be of great import to the community. Mr. Stoepker expressed concern because Kuncaitis did not abstain from discussion this evening, nor did he abstain from discussion of or decision-making in the Meijer variance brought several months ago. Kuncaitis asked if Mr. Stoepker was saying that he would have no problem with his participation; Mr. Stoepker responded that he could not offer an opinion in this decision. He stated that had he known that there would be one member missing and one member abstaining, and that therefore he would need unanimous approval from the remaining three present, he made have made a different decision as to whether or not to proceed with the hearing this evening. Kuncaitis observed that as the Chair he is free to abstain from voting in any event. Mr. Stoepker stated that it is customary and appropriate for potential conflicts to be disclosed at the outset of a hearing. Had he known earlier he might have asked for a continuation until there was complete attendance to enhance his chances of success. Kuncaitis noted that two regular members are absent this evening; Kipley is an alternate.

Zopf stated that the vote could proceed with Kuncaitis abstaining or the matter could be continued to next month when one or both of the regular members are present. If both are present, because Kipley began this case he could remain on it. He is here this evening in substitution for Belcher, who would then remain out of this case and it would be decided by Collins, Kipley, Smith and Krause. Mr. Stoepker stated that he would request a continuation to next month.

Krause withdrew his motion; Kipley withdrew his second.

Motion by Krause, support by Kipley to continue the hearing to the next meeting at which a full board is present. Motion carried unanimously.

- b) **Hearing for Cherry Country Fruitworks for a determination that an extension of Cherry Country Fruit Works processing plant will not be inimical to public health, safety, or welfare, located at 10106 US Highway 31 North, under Section 9.5, Extension of Nonconforming Use of Structure:** Nels Veliquette, Cherry Country Fruitworks, presented his application for a modest addition to their existing processing plant. The addition would be used for storage and perhaps packaging, and will look similar to the rest of the existing building. One external loading dock would become an internal loading dock. Peninsula Construction is the contractor, and county agency permits are forthcoming.

Kuncaitis asked if the footprint of the proposed addition would be similar to the area of existing pavement; it will extend slightly farther out. This area is already used as part of the operation by storage trailers. Kipley asked if the addition would be visible from US 31; it will not.

Public Hearing opened and closed at 7:40 p.m., there being no public comment.

Kuncaitis noted that the surrounding property is under the same ownership as the subject property. The proposed addition will conform to setback requirements.

Motion by Krause, support by Smith to approve Application #2005-16Z as presented. Motion carried unanimously.

Kuncaitis asked Corpe to attach and incorporate the published public hearing notice, which was not read into the record as is customary.

5. Other Business:

a) Approve 2006 schedule

Motion by Krause, support by Kipley to adopt the 2006 ZBA meeting schedule as presented. Motion carried unanimously.

Motion by Smith, support by Kipley to retain Kuncaitis as Chair and Belcher as Vice Chair for 2006. Motion carried unanimously.

6. Approval of minutes from the November 10, 2005 regular meeting:

Motion by Krause, support by Smith to approve the November 10, 2005 minutes as presented. Motion carried unanimously.

Meeting adjourned at 10:40 p.m.