

ACME TOWNSHIP
Zoning Board of Appeals
February 9, 2006

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

Meeting called to Order at 7:35 p.m.

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

Members excused: L. Belcher

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:** At the end of the last meeting, Kuncaitis expressed a concern that he has a conflict of interest regarding the Meijer application. He has determined that he will not vote on the matter; he will remove himself from or remain in the Chair according to Meijer's comfort level. Scott Nowakowski, representative for Meijer, stated that he feels that if there is a conflict of interest it is extremely remote, and he is comfortable having Kuncaitis continue to chair.

2. **Correspondence:**

- a) E-Mail from Paul Rundhaug, 3733 Bunker Hill Road dated 01/23/06
- b) E-Mail from the CCAT Board dated 02/08/06
- c) E-Mail from John and Marylou Zaloudek, 10351 Kay Ray Road dated 02/09/06
- d) E-Mail from Pat Zigarmi, Shaw Road, dated 02/09/06
- e) E-Mail from Karen LeClair, Sayler Road, dated 02/09/06

3. **Reports:** None

4. **Hearings:**

- a) **Continuation of Public hearing for Meijer, Inc., requesting variances of Section 7.4, Signs, which regulates signage in Acme Township:**
Kuncaitis noted Nowakowski statement at the end of the meeting about not proceeding with construction if signage package is not in place, Nowakowski confirmed (spell out more).

Kuncaitis asked about whether or not the Board could override any variance the ZBA might see fit to grant (Katie's explanation).

Kuncaitis recapped the application components for the public. Chris DeGood, Gourdie Fraser, stated that pursuant to discussion the Lautner Road monument sign request was reduced from the name of the development and all tenants to just the development name and Meijer branding.

Mr. Pete Webster, an attorney who works with Tim Stoecker, spoke on behalf of Meijer. He stated having reviewed Zopf's memo, which he will address. Starting with the north wall signage, the application requested a size of approximately 640 sq. ft. The signage plan documentation provided by Gourdie Fraser displayed a sign of approximately 410 sq. ft. for the west wall. 410 sq. ft. is the appropriate size for consideration and is shown to scale on the building elevation prints. This size is consistent with that on the Garfield Township sign, and smaller than that on other locations. Mr. Nowakowski stated that in Garfield the "Meijer Fresh" sign is 272 sq. ft. and the "Why Pay More" is 144 sq. ft. The signage in Cadillac totals 740 sq. ft. (576 and 144 sq. ft. respectively.) Licensee signage is identical in both locations. The north wall signage is still contemplated to be as submitted.

Mr. Webster noted Zopf's discussion of the ordinance Basic and Special Conditions, and that all but 3 Basic Conditions are met without discussion. The ones remaining for review appear to him to be the question of public interest, whether the situation is unique or common, and whether the monument sign may include the names of project tenants.

Speaking to uniqueness vs. recurrence of the situation, the concept under discussion is that perhaps the variance request should be tabled until such time when and if the Planning Commission reviews the zoning ordinance and prepares an amendment to the sign requirements, and until that ordinance is reviewed and adopted by the Board of Trustees. Mr. Webster asserts that the conditions on the site are unique and that it would be inappropriate to table a variance request based on current regulations pending the creation of future regulations.

As to uniqueness, Mr. Webster asserted that the Meijer structure has been pushed away from the minimum property setback lines due to the Planning Commission's desires, DEQ requirements and the environmental characteristics of the site to such an extent that the signage normally permitted had the structure been closer to the minimum setbacks will not be adequate. He asserted that the B-3 district allows for different signage, and that occupants have an expectation and a right to such signage. He believes the Meijer site should be compared to other B-3 sites in terms of geography and environmental features and how they would impact building setback.

Mr. Webster asserted that tabling the application pending an ordinance amendment would be a *de facto* moratorium of an inappropriate nature.

Mr. Webster believes that individual buildings in the development have a right to individual monument signing along the roads. He feels that by requesting one monument sign displaying all the names they are working with the community's expectations and requirements to minimize signage to mutual benefit.

Mr. Webster believes the application meets all three possible Special Conditions and not just the one required. He believes there is a practical difficulty based on similarly to the current situation and those obtaining in existing case law. He also believes that exceptional circumstances exist due to the larger than minimum setbacks from the roadways, preservation of open space and addressing DEQ environmental concerns. As to the final Special Conditions he believes that

Meijer has a substantial property right to signage, which is critical to a business. They are requesting a variance because they believe they have demonstrated the critical need for such to preserve their substantial property right.

Kuncaitis stated that last month the applicant made a request that each individual sign variance requested be addressed individually rather than in an "all or nothing" package, and asked if this was still their desire; Mr. Nowakowski said this would be acceptable.

Krause asked Mr. Webster about several terms he used: "unique" and "topography." He asked why the store is unique and why the topography is different from other sites. Mr. Webster stated that the property is unique due to its zoning classification and size. By "topography" he is referring to the presence and configuration of wetlands on a rolling site. He asserted that because of these conditions Meijer agreed to more than minimum-required setbacks from the roadways to leave existing wetlands in place, rather than seeking to mitigate existing wetlands near the road to place the store there and recreating new wetlands on other portions of the site. Krause believes that there is nothing unique about the situation. Were the building in a different place, he believes the outlots would be "useless." He also believes that the site is basically flat rather than demonstrating topographic changes, and the wetlands have no impact on whether or not a sign can be seen. Mr. Nowakowski stated that had he suspected that obtaining the requested signage would be an issue, they would have sought to locate the store at the minimum setback from the roadway and mitigate the wetlands in that area. Mr. DeGood added that the site was designed to minimize mitigation areas, and that some of the wetlands were unregulated and could have been filled without mitigation as far as the DEQ is concerned. Krause remained unconvinced.

Collins stated that he travels statewide on a weekly basis, and hears the concern about the large setback. However, the store is very large and can't help but be quite visible. The gas station is proposed to be quite close to the road, and this is generally the first thing he will notice. He believes the gas station itself will provide substantial advertising for the site.

Kuncaitis noted that the north side wall sign will be 15' x 38'. At the last meeting there appeared to be a great disparity between the north and west wall signs, but this difference has diminished greatly. He asked how this would impact the animated computerized presentation given last month. Mr. DeGood confirmed the discrepancy exists.

Kuncaitis directed discussion to the proposed monument signs. Mr. Nowakowski stated that outlots would not have freestanding signs but would still have wall signage; Mr. DeGood asserted that the ordinance would permit each outlot to have both. Hull stated disagreement with the concept that individual outlots are entitled to individual monument signs within the context of a Planned Shopping Center. Any disagreement with his assessment would require an interpretive ruling from the ZBA.

Krause believes that for this type of project, a monument sign at the road listing outside tenants is an "industry standard." He feels this is demonstrated by the

tower with signage at the Grand Traverse Crossings. Unless the situation is an enclosed mall, he finds listing of all tenants on a monument sign acceptable as long as they don't have individual ground signs. Kuncaitis observes the main monument sign on M-72 to be 280 sq. ft. On the sign plan the calculation indicates that per side there would be 130 sq. ft. of signage exclusive of the portion that says Lautner Commons, which is another 25 sq. ft. for a total of nearly 150 sq. ft. per side. The proposed monument sign for Lautner Road would appear to be approximately 60 sq. ft. on each side.

Smith asked about direction signs into the development; it was determined he was referring to the monument signs under discussion. The proposed location of the monument signs on the site was discussed, and that they would be about 250' from the traveled portion of the road. The monument sign would be double-sided. Smith asked why the wall signage would have to be as large as requested. Mr. Nowakowski stated that for marketing purposes it must be visible from the highway. Smith felt that the monument sign would provide visibility enough. Mr. Nowakowski stated that the different signs are required to provide visibility from different distances and angles. He stated that his store is a fairly basic "big box" that does not use a readily-identifiable architecture such as that Target uses. They need the signage to provide brand identity.

Smith stated that the signage permitted by the ordinance is vastly different than that being requested. He does not see how the ZBA could reasonably grant such a large variance from the standard requirements. He feels strongly that the ordinance should be strictly adhered to or torn up. Mr. Nowakowski stated that perhaps the ordinance does need review and revision, and that he would have designed the site far differently had he understood there would be any question about obtaining the requested signage. Smith was going to ask a question about the Meijer application considered by a previous township administration; Mr. DeGood stated that the previous application has no relevance to the current one. Smith stated that he does not feel it appropriate to "arbitrarily" change the conditions of the sign ordinance. It should go through the appropriate public review process. He feels that if the request is granted it would be very hard to adhere to the ordinance in many other situations as well. Mr. Nowakowski agreed to the extent that a similar situation occurs. Smith feels that the request should be addressed through an ordinance amendment rather than through a variance. He stated that he was on the township Board when the first township zoning ordinance was enacted in 1970. He recognizes that ordinances are amended from time to time, but he feels that the township has stuck by its ordinance with little or no revision all through the years. Its integrity must be upheld, and the Planning Commission should review the ordinance. Hull confirmed that by a 5-4 vote the Planning Commission decided that they should review the ordinance and create regulations for the situation. Kuncaitis read the motion from the draft unapproved January 30 meeting minutes, confirming that they are going to be looking at the sign ordinance. Mr. Nowakowski felt that the Planning Commission sent Meijer back to the ZBA for a decision; Zopf disagreed, stating that they are back this evening because the applicant requested that the matter be tabled for a month and that their presence this evening has nothing to do with the Planning Commission action.

Mr. Webster stated that an ordinance cannot address every single situation that might arise, which is why variance provisions exist. Those situations are unique and uncommon, and Meijer is here because they believe that they are a unique and uncommon situation because the building is set back as far as it is as a function of township request rather than independent applicant choice. Hull reminded the ZBA that last month he showed them the Meijer plan initially submitted to the revision existing today and demonstrated that the store has moved very little over the course of the process, which would tend to negate Mr. Webster's assertion that the building location is far removed from the road as a result of township request alone. Mr. DeGood stated that the lesson to be learned is that the building is far back from the road but could be moved closer, that the proposed signage sizes were in the original application packet submitted slightly over a year ago, and that no concern was ever raised about them until a very late stage of the process. He stated that the current building location is a result of discussion between applicant and commission, and stated that the applicant is not saying that they were forced to put the store there but that the location is a result of "give and take" between applicant and commission.

Hull stated that the process has been going on for a year, but it has been undertaken by individuals representing the applicant who are presumed to be experienced and knowledgeable in the general process. It should not be construed to be the township's fault if the applicant submitted signage not in keeping with ordinance requirements but waited a year to submit an application to receive permission for the signage. Smith asked if the applicant read and was aware of the requirements before they submitted their application originally with oversized signage; Mr. Webster stated that they were and that he would disagree with any finding of the ZBA that the conditions preventing a variance are a result of applicant action. He feels that accommodation as far as the placement of the building should be a relevant factor in the decision. Smith felt that the applicant should not be surprised if they intentionally submitted a signage request that is not in keeping with ordinance requirements and concerns are being expressed in response. Kuncaitis asked Krause if the Planning Commission has addressed the signage package; Krause does not believe the package was presented to the commission. Mr. DeGood stated that it has been in the package all along, even if it has not been discussed. He said that at no point did anyone on the Commission mention the need for the variance, although he said he was not implying it was the commission's responsibility to do so. Krause stated that it was not presented for their consideration.

Krause feels that there may be some room to grant a variance regarding the wall signage for the north building face.

Kipley feels that concerns that granting a variance will lead to a rash of requests for larger signage is overblown. There are only 4 other B-3 zoned properties in the township; one is right next to the Meijer property, one is in Bates, one is at the heart of the Resort and one is at the corner of Mt. Hope and US 31. He feels that granting some sort of variance is warranted.

Smith asked that people consider the Lowe's store on US 31 south. That building is very invisible from the road, and they have a sign next to the road to help people find them. He finds it difficult to think that anyone in this region doesn't

know where the new Meijer store might be. Mr. Nowakowski stated that they will be relying heavily on tourist traffic to support the Acme location. Smith believes that most of the traffic will be local, and that even so visitors will manage to find them with somewhat less signage than is being requested. He does not believe the ZBA can grant a variance of the magnitude requested and still be in any way consistent with the aims of the Zoning Ordinance. Mr. Nowakowski stated that approving the requested signage should be viewed as enhancing traffic safety because people won't have to work hard to locate the store and understand how to reach it safely. He also believes it will help people use roads internal to the Meijer and potential Village at Grand Traverse developments rather than relying too heavily on the main thoroughfares. Smith recognizes that a traffic signal would be installed at M-72 and Lautner Road which will help slow traffic for wayfinding. Mr. Nowakowski believes that in the future the VGT will be built and that there will be internal road connections from Meijer through the VGT and the Acme Village that will be beneficial in bypassing thoroughfares, and will be paid for by the property developers. Smith asked who will pay to improve Bunker Hill Road when traffic increases on it. Mr. DeGood stated that he designed the Lowe's signage; the pylon sign is about 26' tall. He stated that he is also aware of an assertion that Garfield Township has 100 sq. ft. maximum signage requirements and that this is not true; that their requirements are consistent with what Meijer is requesting. Kuncaitis observed that the Acme ordinance was designed in large part to prevent this township from looking like Garfield.

Zopf spoke to Basic Condition D, the one relating to whether or not the condition on the property is recurrent. If the ZBA finds that it is, case law suggests that the proper course of action is for an ordinance amendment to occur. The Planning Commission does not have the authority to grant a variance of the sign ordinance, which is why the matter is before the ZBA. Zopf also noted that if all of the Basic and one Special Conditions are met, the ordinance states that the ZBA "may" grant a variance – it does not say that the ZBA "shall" grant a variance. The ZBA may find that all the conditions are met and still deny the request or grant a smaller variance. A variance can only be considered when and if all Basic and at least one of the Special Conditions are met.

Discussion turned to the proposed gas station pricing signage. Hull believes that the LED lights are an exposed and visible light source, which is prohibited by the ordinance and therefore requires a variance; Mr. DeGood is not convinced this is the case. He says that the only difference is that the panel covering the LEDs is transparent rather than opaque and that a variance is not required.

Collins expressed regret that the matter was not brought to the ZBA earlier by the applicant. He believes that consideration of an ordinance amendment is indicated in the situation, and if addressed earlier there would have been more time to do so in during the ongoing application process. He feels that granting the variance would significantly impact the ordinance, and notes that township businesses seem to be surviving just fine with what they are currently permitted to have. He agrees that granting this variance would open the door to many similar requests throughout the township business community. Mr. Nowakowski stated that if he locked into 100 sq. ft. for wall signage, he "will move the store up to M-72."

Public Hearing opened at 9:00 p.m.

Kuncaitis asked Corpe to read the correspondence listed above for the public, which was done. He also directed that all comments relate specifically to signage and not to any other aspect of the project.

Anne Rundhaug stated that she did the research for the letter her husband wrote. Meijer indicated different Garfield Township standards than those conveyed to her by Mr. Wood.

Noelle Knopf, 5795 US 31 North, would like to see the ZBA compromise with the applicant. She perceives that right now many of the members have decided that a variance is not warranted, but this would result in the store being moved closer to the road. She would prefer that the store stay where it is. She believes that the ZBA should be mindful of what she perceives is their mission: to grant variances where warranted. She does not believe there has been enough deliberation at this point.

Mr. Rundhaug stated that when K-Mart came to the community they came very quickly to the ZBA asking for a variance, and they were denied and required to conform. They found their answer early in the process. Lanny Johnson also had to adhere to the sign ordinance.

Virginia Tegel, 4810 Bartlett Road had some questions for the applicant: the specific dimensions of the proposed north wall sign (360 sq. ft., from top of dot on J to bottom of J is slightly over 15', and the height of the M is 8'6"; from one end to the other is 38.5') and west wall sign (410 sq. ft.; J height 16', M nearly 10' tall; approximately 41' long from end to end). Ms. Tegel asked if she could address elements of the overall application in response to applicant statements; Kuncaitis replied that she should stick to signage-related items. Her calculations say that the total square footage of the wall signage would be somewhat over 900 sq. ft., which she believes is larger than the Garfield signage rather than being comparable as stated. Regarding the assertion that the signage sizes are needed due to the building setbacks and should be scaled to the size of the building, she feels that this underscores the significant scale of the project. She also noted Mr. Nowakowski's earlier statement that this store will rely primarily on tourism. She likened his presentation to a teenager trying to get a parent to be flexible regarding a curfew and encouraged the ZBA to adhere to the guidelines.

Lewis Griffith, 5181 Lautner Road, was at the first portion of the hearing and saw the animated presentation. It included the landscaping. He felt the presentation was a good representation of how visible the signage would be under a variety of conditions. He believes the signs must be "pretty good sized" to enable them to be seen at the same time that appropriate driving care is taken. Comparisons with other stores in other communities are only comparisons and should not be interpreted as hard and fast standards. He believes that what Meijer is requested is standard to similar developments in most communities and is necessary for safe wayfinding.

Kuncaitis asked if the figures the applicant presented earlier were for combined signage or for individual signs. Mr. Nowakowski recapped, saying that the combined signage on the Garfield Township store for the two major signs is

slightly over 400 sq. ft., with nothing on the sides because visibility isn't needed there. Cadillac has 720 sq. ft. on the front.

Rachelle Babcock, Bartlett Road heard Mr. Nowakowski refer to traffic as a reasoning for the sign sizes. She agrees that there will be traffic congestion that requires traffic to slow before the light. Traffic will be slower overall than it is now, providing plenty of sign for a harried mom with kids in the car to read signs the size normally required by the township. Cars from Bunker Hill and Lautner will certainly be traveling slower and be able to see the store due to all the new lighting being introduced. She hopes that the sign sizes will be decided based on careful planning and zoning ordinance amendment that considers what's best overall rather than just for one property. She feels it is premature to allow a big-box store to introduce a new sign size for the township based on their corporate image standard, and that this is an attempt to circumvent the Master Plan before there is time for proper planning to take place and put it all in proper perspective.

Ms. Knopf stated that a planner has reviewed the situation carefully as far as she knows, and asked Corpe for confirmation. She is a business owner who is happy with her sign and generally with its size – it fits her business. A sign should be fitting to its business. She recalls turning down a requested sign that would have been a picture of a bull for TraVino, feeling it was inappropriate to the community. It is important to have the correct advertising for a use. Hull stated that there was a signage plan in the original submission, and that in John Iacoangeli's first report he noted that the signs were too large. Corpe noted that Iacoangeli's November 18 report indicates that no signage plan was submitted and that he was aware that there would be a ZBA hearing perhaps in December. It does not appear to hear that other than the observation that the signs did not meet requirements that he had offered an opinion.

Mr. Griffith asked the ZBA to consider that this is the township's first planned shopping center and should have visible and appropriate signage.

Public Hearing closed at 9:28 p.m.

Kuncaitis indicated that each requested individual sign variance would be considered individually. He also stated that any variances given will apply only to the Meijer parcel and not if they move their store to the west side of Lautner Road. Zopf asked that for each variance a finding of fact regarding each Basic and Special Conditions be made.

The M-72 Road Monument Sign:

Motion by Krause, support by Kipley to approve the M-72 Road Monument Sign as presented. Basic Conditions B, C, and F have been found to be satisfied as presented in the staff report. Basic Condition A states that the variance must not be contrary to the purpose of the ordinance; this condition has been satisfied because had this condition been contemplated when the ordinance was drafted there would have been provision for a larger sign. Basic Condition D states that the conditions on the property must not be so general or recurrent that formulation of a regular rule would be practical; this condition has been satisfied because

this is the first time the request has arisen in this context, an ordinance amendment is being contemplated, and if the amendment provides more flexibility in the future in this type of situation variances would not be warranted in those cases. Basic Condition E is that variances will relate only to property under control of the applicant; this condition is met because signage will be controlled by the applicant. Special Condition A is that there is a practical difficulty that prevents carrying out the strict letter of the Ordinance that is not economic but relates to the use of a particular parcel of land; this condition is met because the situation at hand is comparable to the conditions cited in Indian Village Manor Company v. City of Detroit, 5 Mich App 679, 685 (1967).

Smith asked Hull if he feels Basic Condition D has been met, Hull was emphatic that he does not. Kuncaitis asked if Hull's concern is the listing of the individual occupant names on the sign alone; Hull confirmed that this is the case. The ordinance does not allow any planned shopping center to have a monument sign that lists all of the tenants.

Motion carried by a vote of 4 in favor (Collins, Kipley, Krause, Smith) 0 against and 1 abstaining (Kuncaitis).

Lautner Road Monument Sign:

Motion by Krause, support by Kipley to approve the Lautner Road Monument signs as presented by the applicant, all conditions being identical to those enumerated regarding the M-72 Monument Sign.

Smith asked Hull if his position regarding this sign is similar to that for the M-72 Monument sign and for the same reasons; Hull stated that it is. The ordinance states that a planned shopping center may list the name of the shopping center but not the individual tenants. The sign is also approximately 60 sq. ft. with the allowable size being 32 sq. ft.

Motion carried by a vote of 4 in favor (Collins, Kipley, Krause, Smith) 0 against and 1 abstaining (Kuncaitis).

Gas Pricing Signage on Gas Station Canopy:

Motion by Kipley, support by Krause to determine that a variance is not required for the gas pricing signage on the gas station canopy because the sign conforms to ordinance requirements.

Motion carried by a vote of 4 in favor (Collins, Kipley, Krause, Smith) 0 against and 1 abstaining (Kuncaitis).

North Wall Sign (15' tall by 38.5' long):

Motion by Krause, support by Kipley to approve the North wall sign be approved at a size reduction from 360 sq. ft. to 300 sq. ft.

Smith felt that increases in the monument signs could be granted, but only if wall signage is kept in compliance with the standard ordinance maximum of 100 sq. ft. This potential variance, whether in the B-3 district or any other district, should not be permitted. The applicant has stated that this store will rely on tourist business; he does not believe tourists come to the area to see large signs.

Motion fails, the vote being 2 in favor (Kipley, Krause), 2 opposed (Collins, Smith) and 1 abstaining (Kuncaitis).

Motion by Krause, support by Kipley to approve the north wall sign at a size of 240 sq. ft., all conditions being identical to those enumerated for the foregoing variance requests.

Kuncaitis noted that this is a proposed 60 sq. ft. reduction from the proposal in the first motion regarding the north wall sign. Smith asked Hull for his thoughts regarding this variance request; Hull is firmly opposed to the request being made for each of the signs, feeling that in all cases Basic Condition D has not been met.

Motion fails, the vote being 2 in favor (Kipley, Krause), 2 opposed (Collins, Smith) and 1 abstaining (Kuncaitis).

West Wall Sign (main sign approximately 16' x 41'):

Hull noted that more than one sign is requested for the west wall, and suggested that all of them together be the subject of the motion. The ordinance speaks to the total square footage of signage on each building elevation and not in terms of individual signs. The total proposed for the west wall as shown on the signage plan dated 02/09/06 is 518 sq. ft. Mr. Nowakowski stated that the purpose of the west wall signage is indicate the location of the Meijer store to people within any future development on the Village at Grand Traverse property.

Motion by Krause, support by Kipley to approve signage for the west wall if the Meijer logo is reduced to 200 sq. ft. for a total west wall signage area of 308 sq. ft., all conditions being identical to those enumerated for the foregoing variance requests.

Smith repeated his previous concerns.

Motion carried by a vote of 4 in favor (Collins, Kipley, Krause, Smith) 0 opposed and 1 abstaining (Kuncaitis).

North Wall Sign:

Motion by Krause, support by Kipley to approve signage for the north wall at a size of 200 sq. ft. to be one Meijer logo with no additional signage, all conditions being identical to those enumerated for the foregoing variance requests.

Motion carried by a vote of 3 in favor (Collins, Kipley, Krause), 1 opposed (Smith) and 1 abstaining (Kuncaitis).

5. Other Business: None

6. Approval of minutes from the January 12, 2006 regular meeting:

**Motion by Kipley, support by Smith to approve the minutes as presented.
Motion carried unanimously.**

Meeting adjourned at 10:20 p.m.