

**ACME TOWNSHIP
Zoning Board of Appeals
November 10, 2005**

Thursday, 7:30 p.m.
Acme Township Hall
6042 Acme Road
Williamsburg MI 49690

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

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

Members excused: None

Staff present: J. Hull, Zoning Administrator
S. Corpe, Township Manager/Recording Secretary
N. Edwardson, Alternate Recording Secretary
J. Christopherson, Township Counsel

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** The original order of business was changed so as to dispense first with the application expected to be briefer.
2. **Correspondence:** None
3. **Reports:** None
4. **Hearings:**
 - a) **Hearing for Robert Evina for approval to add a deck to the building currently housing the Antique Company, located at 4386 US Highway 31 North, approval being required per Section 9.5, Extension of Nonconforming Use of Structure:** Belcher read the published public hearing notice into the record. Mr. Evina was present in support of his application. Kuncaitis asked if the deck proposed to be built will be as close to the lot line as the existing non-conforming structure; Hull replied that it is expected to be. Mr. Evina stated that he intends to purchase the property that formerly housed the Traverse Bay Woolen Company and now houses his furniture business. This property also currently houses an antique store and used to house a fishing tackle business. It is expected that the antique store will relocate to the back of the furniture store building or off-property and that the antique store building may become a restaurant, with the deck used as part of that operation. The former Troutsman building is expected to be demolished.

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

Belcher sought and received additional confirmation that the new deck will conform with setback requirements without variance. He also asked if Mr. Evina will be purchasing the portion of the property in East Bay Township that contains the billboard. Mr. Evina stated that Mr. Plaga is not willing to sell that portion. Corpe offered that according to East Bay Township's records they regard the billboard as zoning violation, but they do not appear willing to enforce the violation at this time. Krause commended the proposed project as a long overdue remedy to a blighted property.

Motion by Krause, support by Collins to approve the requested extension of non-conforming structure.

- b) Continued public hearing for **Meijer, Inc.**, requesting variances of Section 8.12.2(2), [Planned Shopping Center Site Development Requirements] Parking Areas and Circulation, which states: “Any individual parking space in the center shall be accessible by clearly demarcated walks from the shopping areas”; Section 8.12.2(8), Transition Strips, which states that a Planned Shopping Center adjacent to agricultural districts, inter alia, it shall provide a 200’ transition strip on all sides except on the side fronting on a major thoroughfare; and Section 7.5.4(2)f which states: “All lighting shall be from high pressure sodium light sources...”; and an interpretation of Section 8.12.2(2) clarifying the rule quoted above: Belcher read the published public hearing notice into the record, noting that the hearing was originally published for the October 13 meeting and was continued to this date. Kuncaitis stated that the hearing would be addressed in 3-4 distinct segments. He noted that for a variance to be approved, all Basic Conditions and at least one Special Condition as set forth in Section 5.3.3 must be met.

Mr. Timothy Stoepker and Mr. Scott Nowakowski were present in support of their application. The lighting issue was addressed first. Hull stated that the applicant has agreed to use high-pressure sodium lighting in general throughout the parking lot, and is requesting the ability to use metal halide lights in the pedestrian area under the front of the building. Since this lighting is under the building canopy and not specifically in the parking area, due to the way the ordinance is written Hull is uncertain if a variance for this condition is actually necessary. Mr. Stoepker stated that high-pressure sodium lights will be used throughout the parking lot, with the request for metal halide lighting in the garden center, near the building entranceways and under the service station canopy. The ZBA agreed that this condition does not require consideration of a variance request.

Transition strips:

Section 8.12.2(a) addresses the requirement to provide a 200’ transition strip except along M-72 East when a planned shopping center is adjacent to an agricultural district. Mr. Stoepker stated that the applicant and Hull appear to agree that there is a practical difficulty in meeting this requirement, and noted that this variance request is being made at the request and suggestion of the planner reviewing this application on behalf of the township. They displayed the project site plan and stated that the predominance of the border of the site is also zoned B-3, with only a small portion on the south side of the parcel adjacent to Lautner Road zoned A-1 and containing an existing residence. Mr. Stoepker stated that the applicant was encouraged on July 25 to seek to reduce the transition strip width and provide similarly-sized meaningful open space within the site. It was mentioned that this would enhance walkability within the site and in relation to other properties as well as providing the ability to create larger buffers between the proposed structures and the on-site wetlands. He read from the minutes of the referenced Planning Commission meeting. He also referenced the opinion in Hull’s report that neither the requirement nor the particular dimension has an apparent real-world basis. Mr. Stoepker summarized by saying that a practical difficulty exists in that there are varying zoning designations surrounding the subject site and that there is no practical reason to enforce the letter of the requirement.

Kuncaitis stated that his reading of the zoning map confirms the assertion that only small portions of the subject site are adjacent to A-1 zoning. He stated that his interpretation of

the ordinance is that M-72 would be regarded as a major thoroughfare and not Lautner Road because the language in the ordinance refers to an adjacent thoroughfare in the singular so only one adjacent road would be considered as such. For this reason he would interpret that the 200' transition strip might be required along Lautner Road, however, because the property on the west side of Lautner Road is zoned R-3 could be residential or have a mixed use designation applied it seems inappropriate to encourage the transition strip along Lautner Road.

Krause concurred with Mr. Stoepker's recounting of the situation and with Hull's opinion that the requirement in the ordinance is nonsensical. In part the problem is that the size of the transition strip is not relative to the size of the property. On a property this size the strict application of the ordinance would remove a significant percentage of land area from usability.

Belcher asked if there would be any major impact to the development if the buffer, which is proposed to be 50' in some places, were to be increased to 100'. Mr. Stoepker replied that it would create difficulties in providing adequate parking within the site and would decrease the amount of buffer area that could be left around the wetlands, and that at the Planning Commission they were asked to reduce the transition buffers to a minimum. Krause stated that the amount of parking provided has been minimized. Hull noted that the Master Plan states that if this property is developed it should be done in such a way as to make integrate to a maximum degree with any potential mixed use development on the property on the west side of Lautner Road.

Kuncaitis asked how Mr. Nowakowski would rate the landscaping and overall looks and feel of this site plan compared to other Meijer stores; he replied that the layout is similar to most other stores but the landscaping will be the most extensive of any site. The proposed façade for the store is a new corporate design this year.

Public Hearing opened at 8:13 p.m.

Mr. Lewis Griffith, 5181 Lautner Road, asked if he understood the ZBA to believe that part of the subject site is zoned A-1? Kuncaitis replied that the ZBA recognizes that the entire subject property is zoned B-3, and that some of the land to the south of the site is zoned A-1, and that some of the land to the south and all of the land to the immediate east is also zoned B-3. Belcher asked if any of the land in this area is suitable for farming; Mr. Griffith stated that he has lived on his property for 45 years and that it used to be used for cattle but that it has been a very long time since any of the surrounding land has been farmed.

Public Hearing closed at 8:16 p.m.

Motion by Krause, support by Smith to approve the requested variance of the requirement for a 200' transition strip along the west, east and south sides of the property, all Basic Conditions and Special Condition A having been met. Motion carried unanimously.

Demarcated Walkways:

Kuncaitis asked what the white areas running west-east extending from the proposed Meijer store part of the way into the parking lot represent; Mr. Stoepker stated they represent demarcated walkways. He then read from the relevant section of the ordinance.

He claimed that the sidewalks surrounding three sides of the Meijer store and separating the store from the parking lot satisfy the requirement. He also asked why the requirement would be applicable only to a shopping center in the ordinance but is not referenced for any other land use or zoning district. While the Tom's is in an area zoned B-2 rather than B-3 the uses are similar. Therefore, he believes that from a public policy standpoint it makes no sense that the requirement is needed for safety in this situation but not in all of the other similar situations in the township. Mr. Stoepker asserted that the Planning Commission and its planning consultant reached consensus at the July 25 meeting that walkways can be at grade but should be clearly visually demarcated and should be aligned with the building entrances. Raised walkways would be challenging to handicapped users. The proposed at-grade but visually defined walkways emanating from the main entrances will run between some parking spaces and provide a safe haven for handicapped maneuvering from 12 handicapped spaces. They would also extend towards the rest of the development and any potential future development on the west side of Lautner Road, as well as leading towards sidewalks elsewhere within the overall site between proposed buildings. Providing additional demarcated walkways would require an approximate 13% increase in paved area which was also undesirable to the Planning Commission. The sidewalk area adjacent to the front of the store was widened at the Commission's request to make it more pedestrian-friendly.

Hull disagrees with Mr. Stoepker's interpretation. He noted that the ordinance language requires a demarcated walkway from "each individual space" and not from "every space." He noted that he writes his reports from a very strict interpretation perspective. He also believes that this is a prime example of why planning and zoning ideas should not be written into ordinance form by planners but rather by legal draftsmen. Krause stated that the Commission did not understand why this sentence in the ordinance existed. Hull wondered if the language in the ordinance was geared towards the possibility of a parking space separate from all others in a parking lot. He finds the requirement puzzling.

Smith asked how much sidewalk space will be provided in front of the Meijer store for loading and unloading and was told it would be approximately 20'.

Public Hearing opened and closed at 8:40 p.m.

Motion by Smith, support by Krause to approve the requested variance from the requirement for demarcated walkways, all Basic Conditions and Special Condition A having been met.

Belcher noted that if a variance is granted, the ZBA would, in effect, be upholding the notion that the requirement exists. Kuncaitis asked if there is consensus in agreement with Hull's report that the requirement does exist, which was received. Belcher also noted Special Condition A is being deemed to be met because the practical difficulties involved in obeying the requirement represent a safety hazard, and that there would be environmental impacts as well.

Motion carried unanimously.

5. **Other Business:** None

6. **Approval of minutes from the October 13, 2005 regular meeting:**

Motion by Collins, support by Krause to approve the minutes of the October 13, 2005

regular ZBA meeting as presented. Motion carried unanimously.

Meeting adjourned at 8:53 p.m.