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2 **Charter Township of Kalamazoo**
3 **Minutes of the Zoning Board of Appeals**
4 **Held on February 20, 2019**

5 A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was held on
6 Wednesday, February 20, 2019.

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8 **Call to Order.**

9 The chairman called the meeting to order at 7:00 p.m.

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11 **Present Were:**

12 Chairman Jim Short
13 Warren Cook
14 Steve Leuty
15 Fred Nagler
16 Chris Mihelich

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18 Absent was: None.

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20 Also present were: Township Attorney Seth Koches, Township Manager Dexter Mitchell and
21 four members of the audience.

22
23 **Roll Call.**

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25 The chairman called the meeting to order and called the roll.

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27 **Set Agenda.**

28
29 The agenda was amended agenda to add item 7b under New Business – election of ZBA
30 officers.

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32 Cook moved, supported by Leuty, to approve the agenda as amended. The motion passed
33 unanimously.

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35 **Approval of the Minutes of the December 19, 2018 ZBA Meeting.**

36
37 The first item on the agenda was approval of the minutes of the December 19, 2018 Zoning
38 Board of Appeals meeting. The meeting minutes were not provided to all ZBA members prior to
39 the meeting. The ZBA will review the minutes for approval at its next regular meeting.

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41 **Public Hearing. Proposed Car Wash Variance Requests for 4201, 4203, 4123 West Main**
42 **(former Davenport University Property)**

1 The next item on the agenda was the application of Drive & Shine Development, 16915
2 Cleveland Road, Granger, Indiana for three variances related to a proposed automobile wash or
3 car wash establishment on the property addressed as 4201, 4203 and 4123 W. Main Street
4 (former Davenport University property) in the C-2 Zoning District classification within the
5 township as follows:

6 a. A 10 foot variance from the required 15 foot planting strip, required to be
7 placed along the right-of-way as contained in Section 5.02.B.2 of the Township
8 Zoning Ordinance, in order to permit the applicant to place parking spaces and
9 maneuvering aisles in alignment with that of the neighboring property owner 5
10 feet from the right-of-way; and

11 b. A variance from Section 8.02.F.2 of the Township Zoning Ordinance,
12 requiring vacuuming facilities to be located in the rear of the building, in order to
13 permit the vacuuming facilities to be located on the front/side of the building in
14 accordance with standard industry practice and in order to keep them further
15 away from adjoining residential uses on the rear side; and

16 c. A variance from Section 8.02.F.6. in order to permit a car wash to be
17 located closer than 100 feet from an adjoining R-3 Residential Restricted Zoning
18 District classification, in order to permit the proposed building to be located in
19 excess of 50 feet from the property line and approximately 180 feet from
20 building to building.
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22 The public hearing was opened and Andrew Rossell, the applicant's civil engineer, addressed
23 the ZBA on behalf of the applicant. Rossell prepared a presentation for the ZBA. Rossell said
24 that the property is to the west of Popeye's and is zoned C-2. Rossell said the applicant
25 proposes to build a high-end car wash facility. The applicant prepared diagrams which depicted
26 the entrances and exits to the facility. Rossell said there will be self-vacuuming
27 accommodations in the area in front of the property. Rossell said the self-vacuuming area will
28 create a screen to buffer noise from car wash stalls. Rossell said the applicant is requesting a
29 variance to allow the car wash facility to be located within 100 feet of a residentially zoned
30 parcel(s). Rossell said that he designed the car wash facility to minimally impact the south lot
31 and the Sage Terrace Apartments. Rossell provided handouts to the ZBA that explained various
32 decibel levels of vacuums from certain distances. Rossell said he felt the 100 foot separation
33 requirement was in place because car washes are traditionally noisy; however, newer
34 technology reduces noise levels. Rossell said the proposed design places the vacuums as close
35 to M-43 as possible.
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37 Haji Tehrani (the applicant) addressed the ZBA, as the CEO of Drive and Shine. Tehrani played a
38 video to the ZBA, which depicted a similar car wash facility he owns in Indiana. Tehrani said he
39 had 20 years of researching and owning car wash facilities. Tehrani prepared and displayed
40 several renderings of the proposed car wash facility to the ZBA. Tehrani described the internal
41 drive belt and the cleaning process. Tehrani said he may build up to three Drive and Shine
42 facilities in Kalamazoo, and described the possible location for each facility. Tehrani showed
43 diagrams of similar existing car wash facilities he built in South Bend, IN. Tehrani said the car
44 wash building will be made mostly of glass, in order to help buffer existing noise. Tehrani said

1 vacuuming will take place inside the building. Tehrani said he expects the cost of this facility to
2 be approximately \$10 million. Tehrani said the car wash facility will keep its hours of operation
3 from 7:30 a.m. – 8:00 p.m. Tehrani provided a handout to the ZBA regarding sound level meter
4 readings for vacuums and dryers. Tehrani said that strict application of the zoning ordinance
5 creates a hardship to implement this design, and the proposed design will not harm
6 neighboring properties.

7
8 Hudson summarized his prepared staff report for the ZBA. Hudson said that an automobile
9 wash or car wash establishment is a special land use under Section 18.03 of the Zoning
10 Ordinance. Hudson said the subject property is approximately 7 acres in size and is located on
11 the south side of W. Main Street between the Popeye's restaurant and the Kalsec PUD. Hudson
12 said the lot is occupied by the former Davenport University buildings. Hudson said the parcel
13 adjacent to the southwest is zoned RM-2 and is occupied by an apartment complex; adjacent
14 properties to the east and south are zoned PUD and are occupied by a mix of offices and
15 apartment buildings. Hudson said the properties across W. Main Street to the north are in the
16 City of Kalamazoo and are commercial uses.

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18 Hudson said the C-2 District Zoning Classification requires a minimum lot area of 15,000 square
19 feet, a minimum lot width of 100 feet and maximum lot coverage of 60%. Hudson said the
20 setbacks are 35 feet in the front, 25 feet in the side and rear, and a maximum height of 35 feet
21 for structures. Hudson's report indicated that there is a special use requirement of a 100 foot
22 setback from residential, vacuuming activities in the rear only, and that open service bays shall
23 not face an adjacent street without screening by landscaping. Hudson discussed the standards
24 of approval contained in the Zoning Ordinance. Hudson's report listed each criterion to be
25 considered by the ZBA. Hudson discussed the parameters of the Township's police power noise
26 ordinance.

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28 Short asked whether the car wash facility will be a manned operation. Tehrani said yes. Short
29 discussed the vacuums located outside at the front of the property near M-43. Tehrani said the
30 vacuums automatically shut off at 8:00 p.m. and have a 15 minute use limitation per customer.
31 Short confirmed that the applicant is requesting three variances and the applicant must request
32 the variances before applying for a special use approval to the Township Planning Commission.

33
34 Short invited any interested party from the public to provide comment regarding the
35 applicant's request for variances.

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37 Steve Hallgren said there are offices (Briarwood Office Condominiums) located to the east and
38 to the south of the subject property. Hallgren expressed concern regarding traffic and said the
39 area is a bottleneck and very congested. Hallgren said that the applicant will have a lot of cars
40 using the car wash facility which will generate more traffic into an already busy area. Hallgren
41 also expressed concern regarding the noise that will be generated from the car wash facility.
42 Hallgren said he was addressing the ZBA on behalf of the Briarwood Office Condominium
43 Board; he objected to the approval of the applicant's request for variances on behalf of the
44 Condominium Board.

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Jerry VanDerveen addressed the ZBA. VanDerveen said he owns the Pinewood Glenn Apartment complex, which is a \$20 million investment, and contains approximately 180 living units. VanDerveen said the applicant's proposed facility is a beautiful design, but expressed concern regarding the volume of traffic and the noise. VanDerveen said the applicant cannot control his clientele and was concerned people would play loud music and/or create other disturbances. VanDerveen said he respects the applicant's project, but wants to protect his own asset as well. VanDerveen asked for clarification regarding the 100 foot separation rule.

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Hudson said the Zoning Ordinance contains a condition that a parcel housing a car wash must not be within 100 feet of any lot zoned for residential uses. VanDerveen said the Zoning Ordinance is in place for a reason and he doesn't see a hardship created by this language. VanDerveen said he is opposed to the applicant's development and request for variances.

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Hearing no additional public comments, Short closed the public comment portion of the public hearing and the ZBA entered into deliberations. Leuty said the vacuuming is self-service and asked where the units are located and how many there will be. Tehrani said there is one central unit that has an attached hose that will accommodate each parking spot. The facility design depicts approximately 12 parking spaces for the self-service vacuums. Tehrani said he measured the DBA readings at 55 and had no DBA reading when he attempted to measure the noise from the vacuums at 300 feet. Tehrani said he had a slight measurement at 100 feet. Rossell said the site plans may be moved back 15 feet to satisfy a portion of the zoning ordinance. Rossell said the plans were created so the internal drive aligns properly with Popeye's. Leuty discussed sidewalks. Nagler said sidewalks may be addressed by the Planning Commission if there is a special use application. Nagler and Hudson discussed access points and whether the Township Fire Department can access the site. Nagler suggested closing one of the access points on W. Main Street. Tehrani discussed other C-2 uses that generate comparable traffic and noise issues, similar to the car wash facility.

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Mihelich asked whether the 100 foot separation requirement was to protect residents against noise. Hudson and Nagler were unsure. Cook said cars enter from the south and exit to the north. Cook discussed the noise level changing as the car wash doors open and close. Tehrani said the doors are part of the design.

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Koches explained the process for reviewing a request for a variance and noted that standards for ZBA variance consideration are contained in Section 26.05(4) of the Zoning Ordinance. Koches recommended the ZBA consider each ZBA request separately. Koches recommended the ZBA read each standard contained in Section 26.04(4) and determine whether each standard was satisfied.

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Variance Request #1:

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Short discussed the standards contained in Section 26.04(4) regarding the applicant's first request for a variance, a 10 foot variance from the required 15 foot planting strip, required to

1 be placed along the right-of-way as contained in Section 5.02.B.2 of the Township Zoning
2 Ordinance, in order to permit the applicant to place parking spaces and maneuvering aisles in
3 alignment with that of the neighboring property owner 5 feet from the right-of-way. Nagler
4 said he didn't feel granting variance request #1 was appropriate because a different design may
5 be implemented to satisfy the Zoning Ordinance. The ZBA determined that strict compliance
6 with the restriction will not unreasonably prevent the owner from using the property.
7 Furthermore, the ZBA determined that the variance will not do substantial justice to the
8 applicant and other property owners. The ZBA concluded that a lesser variance will not provide
9 substantial relief to the applicant or be consistent with justice to other property owners. Lastly,
10 the need for a variance is self-created.

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12 On motion of Nagler, supported by Mihelich and unanimous vote, the ZBA denied the
13 applicant's first request for a 10 foot variance from the required 15 foot planting strip, required
14 to be placed along the right-of-way as contained in Section 5.02.B.2 of the Township Zoning
15 Ordinance, in order to permit the applicant to place parking spaces and maneuvering aisles in
16 alignment with that of the neighboring property owner 5 feet from the right-of-way.

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18 Variance Request #2:

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20 Short discussed the standards contained in Section 26.04(4) regarding the applicant's second
21 request for a variance, seeking a variance from Section 8.02.F.6 of the Township Zoning
22 Ordinance requiring vacuuming facilities to be located in the rear of the building, to permit the
23 vacuuming facilities to be located on the front/side of the building in accordance with standard
24 industry practice and in order to keep them further away from adjoining residential uses on the
25 rear side. Cook said the industry standards have changed. Cook said that if the rule was in
26 accordance with the ordinance, then a hardship to the applicant would exist. Leuty discussed
27 the industry standards and the impact. Leuty discussed the hardship of placing the vacuuming
28 equipment in the rear of the property. Nagler said granting this variance will do substantial
29 justice to the applicant and said a self-created hardship wasn't an issue because the industry
30 standards are being followed. Mihelich discussed the enclosed unit and noise levels generated
31 therefrom.

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33 The ZBA concluded that strict compliance of the Zoning Ordinance will unreasonably prevent
34 the owner from using the property. The ZBA determined that the variance, if granted, will do
35 substantial justice to the applicant as well as to other property owners. The ZBA determined
36 that a lesser variance will not give substantial relief to the applicant and/or be consistent with
37 justice to other property owners. Lastly, the ZBA determined that the need for a variance has
38 not been self-created by the applicant.

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40 On motion of Nagler, supported by Mihelich and unanimous vote, the ZBA approved the
41 applicant's second request for a variance as presented from Section 8.02.F.2 of the Township
42 Zoning Ordinance, a variance request from Section 8.02.F.6 of the Township Zoning Ordinance
43 as presented.

1 Variance #3.

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3 The ZBA considered the applicant's third request for a variance from Section 8.02.F.6 in order to
4 permit a car wash to be located closer than 100 feet from an adjoining R-3 Residential
5 Restricted Zoning District classification, and in order to permit the proposed building to be
6 located in excess of 50 feet from the property line and approximately 180 feet from building to
7 building.

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9 Nagler said the Zoning Ordinance's 100 foot separation requirement is awkward because an
10 applicant might be able to reasonably separate their use from a residential district. Nagler
11 discussed whether the purpose of the 100 foot separation was to prevent unreasonable
12 interference of residential uses. Nagler said that granting the variance will provide substantial
13 justice to the applicant. The ZBA further discussed whether substantial justice will be done to
14 the other property owners.

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16 Mihelich said the RM-2 District Zoning Classification has limited commercial uses and is not a
17 single family district. Mihelich said there are commercial properties located to the east, west,
18 south and north of the subject property. Cook said the subject property is in the Commercial
19 Corridor District and its purpose is to promote commercial uses. Cook asked if the applicant's
20 proposed use is amenable to the Commercial Corridor District. Mihelich said the applicant
21 could provide more buffers to screen out noise. Nagler said that any use in that location will
22 generate noise; otherwise, the entire lot would be unusable. Nagler said the Planning
23 Commission could mitigate these concerns by placing conditions on the special use permit.
24 Leuty referenced the old zoning map.

25

26 The ZBA read through the standards contained in Section 26.04(4) regarding the applicant's
27 third request for a variance. The ZBA concluded that strict compliance of the Zoning Ordinance
28 will unreasonably prevented the owner from using the property. The ZBA determined that the
29 variance, if granted, will do substantial justice to the applicant as well as to other property
30 owners. The ZBA determined that a lesser variance will not give substantial relief to the
31 applicant and/or be consistent with justice to other property owners. Lastly, the ZBA
32 determined that the need for a variance has not been self-created by the applicant.

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34 On motion of Leuty, supported by Mihelich and unanimous vote, the ZBA approved the
35 applicant's third request for a variance as presented.

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37 Short filled out the ZBA decision form and signed the same. Attorney Koches personally served
38 Tehrani with a copy of the signed decision form. Copies were made for Township records.

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40 **Old Business.**

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42 None.

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44 **New Business.**

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2 **Amendment to the ZBA's Rules of Procedure.**

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4 Proposed amendments to the ZBA's Rules of Procedures were provided to the ZBA members in
5 their agenda packets. The same were read and Short briefly discussed the proposed
6 amendments with the ZBA.

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8 On motion of Cook, supported by Nagler and unanimous vote, the ZBA approved the
9 amendments to the ZBA's Rule of Procedure as presented.

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11 **Election of Officers.**

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13 Short noted that on the agenda for the evening was an amendment to the Bylaws of the Zoning
14 Board of Appeals allowing the Zoning Board of Appeals to elect officers at the first meeting of
15 the year, as opposed to in January. This, he said, was to eliminate an unnecessary meeting in
16 January in which only the election of officers was normally on the agenda. The ZBA discussed
17 the election of officers.

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19 On motion of Cook, supported by Nagler and unanimous vote, the slate of officers of the Zoning
20 Board of Appeals are as follows:

21
22 **Chairperson:** Jim Short

23 **Vice Chairperson:** Warren Cook

24 **Secretary:** Chris Mihelich, on the condition that he is appointed to the ZBA as a full-time
25 member.

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28 **Other matters to be reviewed by the ZBA.**

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30 **Citizen Comments.**

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32 None.

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34 **Correspondence received.**

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36 The only correspondence received was a mailing that was provided to the ZBA members.

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38 **Board Member Comments.**

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40 Cook discussed the complexity and impact of the Drive & Shine request for variances
41 application. Cook discussed the impact approving the variances had on the Zoning Ordinance.
42 Cook said a lot of work went into developing the zoning map. Nagler said it was evident that he
43 wasn't sure the intent of the Zoning Ordinance was to preclude car washes were permitted on

1 M-43. Discussion ensued regarding the zoning map. Nagler said the limitations focused on the
2 lot, not the use.

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4 **Report of the Planning Commission Member.**

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6 Nagler reported on the recent planning commission meeting.

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8 **Report of the Township Board Member.**

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10 Leuty reported on the recent activity of the township board.

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12 **Adjournment.**

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14 There being no additional business before the Zoning Board of Appeals, upon motion of Cook,
15 supported by Nagler, and unanimous approval, the meeting was adjourned at 9:15 p.m.

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17 Respectfully Submitted,

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21 _____
22 Chris Mihelich, Secretary of the Planning
23 Commission

24 Synopsis of Actions
25 ZBA meeting February 20, 2019

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28 1. The request of Drive & Shine Development, 16915 Cleveland Road, Granger, Indiana for
29 three variances related to a proposed automobile wash or car wash establishment on
30 the property addressed as 4201, 4203 and 4123 W. Main Street (former Davenport
31 University property) in the C-2 Zoning District classification were resolved as follows:
32
- 33 a. The ZBA denied the 10 foot variance from the required 15 foot
34 planting strip, required to be placed along the right-of-way as
35 contained in Section 5.02.B.2 of the Township Zoning Ordinance, in
36 order to permit the applicant to place parking spaces and
37 maneuvering aisles in alignment with that of the neighboring
38 property owner 5 feet from the right-of-way; and,
 - 39 b. The ZBA approved the variance request from Section 8.02.F.2 of the
40 Township Zoning Ordinance, requiring vacuuming facilities to be
41 located in the rear of the building, in order to permit the vacuuming
42 facilities to be located on the front/side of the building in accordance
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1 with standard industry practice and in order to keep them further
2 away from adjoining residential uses on the rear side; and,
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4 c. The ZBA approved the variance from Section 8.02.F.6. in order to
5 permit a car wash to be located closer than 100 feet from an
6 adjoining R-3 Residential Restricted Zoning District classification, in
7 order to permit the proposed building to be located in excess of 50
8 feet from the property line and approximately 180 feet from building
9 to building.

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11 2. The ZBA approved the amendments to the ZBA's Rules of Procedure as presented.

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13 3. The ZBA voted to elect officers of ZBA.