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**Charter Township of Kalamazoo  
Minutes of the Zoning Board of Appeals  
Held on January 15, 2020**

10 A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was held on  
11 Wednesday, January 15, 2020.

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**Call to Order.**

21 The Chairman called the meeting to order at 7:00 p.m.

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Present Were:

33 Jim Short, Chairman  
34 Steve Leuty  
35 Shawn Blue  
36 Robert Mihelich  
37 Fred Nagler  
38 Maryanne Sydlick, Alternate

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Absent was:

None.

Also present were: Township Planner Patrick Hudson and Township Attorney Seth Koches. No one from the public attended the meeting.

**Roll Call.**

Chairman Short called the roll, noting that all Board members were present, including Alternate Board member, Maryanne Sydlick.

**Approval of the Agenda.**

The ZBA members received a copy of the agenda in their member packets.

Blue moved, supported by Nagler, to approve the agenda as presented. The motion passed unanimously.

**Approval of the Minutes of the December 18, 2019 Regular ZBA Meeting.**

The next item on the agenda was approval of the minutes of the December 18, 2019 regular Zoning Board of Appeals meeting. The draft meeting minutes were provided to all ZBA members in their agenda packet. There were no additions or revisions made to the minutes.

1 Nagler moved, supported by Mihelich, to approve the minutes of the December 18, 2019  
2 regular ZBA meeting as presented. The motion passed unanimously. The minutes were signed  
3 by Mihelich and provided to Hudson for transmission to the Township staff.  
4

5 **Public Hearings.**

6  
7 **4201 W. Main Street – Drive N Shine – Flag Pole Height Variance**  
8

9 The next item on the agenda was the public hearing for consideration of the request of DEV  
10 LLC, 4201 W. Main Street, Kalamazoo, MI 49006, (Drive-N-Shine) for a 20-foot variance from  
11 the permitted 40-foot flagpole height restriction contained in Section 2.05 of the Township  
12 Zoning Ordinance in order to permit the placement of a 60-foot tall flagpole to support an  
13 American flag at the Drive N Shine facility at 4201 W. Main Street. The subject property is  
14 located in the “C-2” Commercial Corridor District Zoning Classification. Standards for ZBA  
15 consideration are contained in Section 26.05.4 of the Township Zoning Ordinance.  
16

17 Hudson prepared a staff report which was provided to the Board members in their agenda  
18 packets and summarized it. Hudson said that the subject property is part of a 7.116 acre parcel  
19 on the south side of W. Main Street between the Popeye’s restaurant and the Kal-sec PUD.  
20 Hudson noted that adjacent properties to the west are zoned C-2 and is occupied by  
21 restaurants and offices. Properties located to the east and to the south are zoned PUD and are  
22 occupied by a mix of offices and apartment buildings. The properties across W. Main Street to  
23 the north are located within the City of Kalamazoo and are commercial uses.  
24

25 Hudson said that the C-2 District requires a minimum lot area of 15,000 square-feet, a  
26 minimum width requirement of 100’, maximum lot coverage of 60’, building front yard setback  
27 of 35 feet, each side yard setback of 25’, and a rear yard setback of 25’. Hudson said that the  
28 proposed structure is a 60-foot tall flagpole that will be located at the W. Main Street right-of-  
29 way (0-foot setback).  
30

31 In his application, the applicant indicated that it is a trademark of Drive-N-Shine to have a large  
32 American flag to display patriotism at all of their facilities. The application stated that a 40’  
33 flagpole will not be proportionate with the height of the building. The application included a  
34 site plan of the subject property depicting the location of the proposed flagpole.  
35

36 Section 2.05.B of the Township Zoning Ordinance, titled “Exceptions to Height Standards”  
37 states in relevant part:  
38

39 “3. Flagpoles

40  
41 Flagpoles in residential and agricultural districts shall not exceed twenty-five  
42 (25) feet in height. Flagpoles in nonresidential districts shall not exceed forty  
43 (40) feet in height.”  
44

1 Short opened the public hearing and invited any interested party to give public comment in  
2 support of or in opposition to the applicant’s request for a variance. Hearing no additional  
3 public comments, Short closed the public hearing and the Board members entered into  
4 deliberations.

5  
6 Koches recommended that the Board review the standards of approval for granting a request  
7 for a variance which are contained in Section 26.05.4 and read the same to the Board. Section  
8 26.05.4 titled “Variances” states,

9  
10 “The ZBA shall have authority in specific cases to authorize one or more  
11 dimensional or "non-use" variances from the strict letter and terms of this  
12 Ordinance by varying or modifying any of its rules or provisions so that the spirit  
13 of this Ordinance is observed, public safety secured, and substantial justice done.  
14 A dimensional or non-use variance allows a deviation from the dimensional (i.e.,  
15 height, bulk, setback) requirements of the Ordinance. A use variance authorizes  
16 the establishment of a use of land that is otherwise prohibited in a zoning  
17 district. The ZBA is not authorized to grant use variances by this Ordinance.

18  
19 Such authority shall be exercised in accordance with the following standards.

20  
21 a. The ZBA may grant a requested "non-use" variance only upon a finding  
22 that practical difficulties exist and that the need for the variance is due to  
23 unique circumstances peculiar to the property and not generally  
24 applicable in the area or to other properties in the same zoning district. In  
25 determining whether practical difficulties exist, the ZBA shall consider the  
26 following factors:

27  
28 (1) Strict compliance with restrictions governing area, setback,  
29 frontage, height, bulk, density or other non-use matters, will  
30 unreasonably prevent the owner from using the property for a  
31 permitted purpose or will render ordinance conformity  
32 unnecessarily burdensome.

33  
34 (2) The variance will do substantial justice to the applicant, as well as  
35 to other property owners.

36  
37 (3) A lesser variance than requested will not give substantial relief to  
38 the applicant and/or be consistent with justice to other property  
39 owners.

40  
41 (4) The problem and resulting need for the variance has not been self-  
42 created by the applicant and/or the applicant's predecessors. (For  
43 example, a variance needed for a proposed lot split would, by

1 definition, be self-created, so such a variance typically would not  
2 be granted.)

- 3  
4 b. In all variance proceedings, it shall be the responsibility of the applicant to provide  
5 information, plans, testimony and/or evidence from which the ZBA may make the  
6 required findings. Administrative officials and other persons may, but shall not be  
7 required to, provide information, testimony and/or evidence on a variance request.”  
8

9 Hudson confirmed that the approval of a variance does not require each standard to be  
10 satisfied. Koches said that each Board member may weigh the facts to each standard to  
11 determine whether the standards of Section 26.05.4 are satisfied. Koches said once the Board  
12 discusses and considers each standard of approval, each Board member can weigh whether  
13 standards are satisfied to the level that granting the variance request should be approved or  
14 denied.  
15

16 The Board discussed the standards of review. Short discussed the applicants request and  
17 expressed concerns regarding the size of the flagpole. Sydlick said she works at a university and  
18 is not in favor of the size of the flagpole the applicant proposed to build (60 feet). Nagler  
19 agreed with Short and Sydlick and said there wasn't a basis to make an approval. The Board  
20 noted that the applicant's request is a self-created and it found no hardship. Blue expressed  
21 concern about approving the applicant's request as presented. Blue said that "patriotism"  
22 wasn't a sufficient reason to grant approval of a variance and noted that future applicants may  
23 use this as a basis to request a larger variance from Section 2.05 of the Township Zoning  
24 Ordinance. Blue said that Section 2.05.B.3 of the Township Zoning Ordinance limits the height  
25 of a flagpole to 40 feet. Blue said that is more appropriate for the Planning Commission to  
26 consider a text amendment to Section 2.05.B.3 rather than the ZBA granting a variance.  
27

28 Leuty discussed the applicant's request and asked whether MDOT was aware of it and/or had  
29 any influence or input. Leuty discussed the possibility of the flagpole 60' tall being a distraction  
30 to traffic. Leuty noted that up to 30,000 vehicle travel on W. Main Street every day. Leuty also  
31 expressed concerns about someone driving into a 60' tall flag pole. Leuty noted that the  
32 flagpole could foreseeably fall across W. Main Street, blocking traffic and/or emergency service  
33 vehicles. Short agreed that a 60' flagpole may be distracting to drivers on W. Main Street. Blue  
34 discussed setback requirements for flagpoles. Hudson said that the Township Zoning Ordinance  
35 does not provide any setback requirements for flagpoles. Hudson discussed various sign  
36 standards contained Section 7.05(c) of the Township Zoning Ordinance. Blue noted that after  
37 performing some research, a 40' flagpole will accommodate an 8' x 13' flag.  
38

39 The Board noted that the applicant was not present for the public hearing. Hudson confirmed  
40 that he timely sent out mailed notice to the applicant and the appropriate property owners  
41 and/or occupants. Koches confirmed that notice of the public hearing was timely sent to the  
42 Gazette for publication. Koches said he would obtain a copy of the affidavit of publication and  
43 forward it to Hudson to keep in the Township records. The Board determined that even if the

1 applicant was present, it would not materially impact the decision made by Board because  
2 there was not a basis to approve the requested variance.

3  
4 Nagler moved, supported by Mihelich, to deny the request of DEV LLC, 4201 W. Main Street,  
5 Kalamazoo, MI 49006, for a 20-foot variance from the permitted 40-foot flagpole height  
6 restriction contained in Section 2.05 of the Township Zoning Ordinance in order to permit the  
7 placement of a 60-foot high pole to support an American flag at the Drive N Shine facility  
8 located at 4201 W. Main Street, because:

- 9
- 10 1. The Board concluded that strict compliance with the Zoning Ordinance flagpole  
11 height restrictions under Section 2.05 will not unreasonably prevent the owner  
12 from using the property for a permitted purpose and conformance with the  
13 ordinance is not unnecessarily burdensome; and,  
14
  - 15 2. The Board concluded that the applicant's request variance will not do substantial  
16 to other property owners; and,  
17
  - 18 3. The Board concluded that a lesser variance than requested will not give  
19 substantial relief to the applicant and/or be consistent with justice to other  
20 property owners; and,  
21
  - 22 4. The Board concluded that the problem and resulting need for the variance was  
23 self-created by the applicant.  
24

25 The motion passed unanimously. Short filled out the notice of decision form. The applicant was  
26 not present to receive personal service of the notice of decision form. Koches said that the  
27 notice of decision form will be mailed to the applicant within the next couple of days.  
28

29 **Old Business.**

30  
31 None.  
32

33 **New Business.**

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35 **ZBA Officers for 2020**  
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37 The next item on the agenda was election of Board officers for 2020.  
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39 The Board discussed and nominated Short to be the ZBA Chairman for 2020. Nagler moved,  
40 supported by Blue, to appoint Short as the Board's Chairman for 2020. The motion passed  
41 unanimously  
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1 The Board discussed and nominated Blue to be ZBA’s Vice-Chair for 2020. Nagler moved,  
2 supported by Leuty, to appoint Blue as the Board’s Vice-Chairman for 2020. The motion passed  
3 unanimously

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5 The Board discussed and nominated Mihelich to serve as the ZBA’s Recording Secretary for  
6 2020. Nagler moved, supported by Leuty, to appoint Mihelich as the Board’s Recording  
7 Secretary for 2020. The motion passed unanimously.

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

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11 **None.**

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13 **Citizen Comments.**

14  
15 None.

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17 **Correspondence received.**

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19 Hudson noted that a copy of the Planning and Zoning informational newsletter was received  
20 and distributed copies of it to the ZBA members.

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22 **Board Member Comments.**

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24 Leuty discussed the recent actions of the Township Board regarding recreational marijuana.  
25 Blue said he was reading through the Township Zoning Ordinance to familiarize himself with it.  
26 Blue discussed enforcement procedures regarding impound lots.

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

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30 Nagler summarized the recent Planning Commission meeting.

31  
32 **Adjournment.**

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34 There being no additional business, Leuty moved, supported by Blue, to adjourn the ZBA  
35 meeting. The motion passed unanimously and the meeting was adjourned at 7:45 p.m.

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37 Respectfully Submitted,

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41 \_\_\_\_\_  
42 Robert Mihelich, Secretary of the Zoning  
43 Board of Appeals  
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**Synopsis of Actions**  
**ZBA meeting January 15, 2020**

Regarding the request for variances from Kalamazoo Probation Enhancement Programs:

1. Denied the request of DEV LLC, 4201 W. Main Street, Kalamazoo, MI 49006, for a 20-foot variance from the permitted 40-foot flagpole height restriction contained in Section 2.05 of the Township Zoning Ordinance in order to permit the placement of a 60-foot high pole to support an American flag at the Drive N Shine facility located at 4201 W. Main Street, because:

1. The Board concluded that strict compliance with the Zoning Ordinance flagpole height restrictions under Section 2.05 will not unreasonably prevent the owner from using the property for a permitted purpose and conformance with the ordinance is not unnecessarily burdensome; and,
2. The Board concluded that the applicant's request variance will not do substantial to other property owners; and,
3. The Board concluded that a lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners; and,
4. The Board concluded that the problem and resulting need for the variance was self-created by the applicant.

2. Appointed Short to serve as the Board's Chair for 2020.

3. Appointed Blue to serve as the Board's Vice-Chair for 2020.

4. Appointed Mihelich to serve as the Board's Recording Secretary for 2020.