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**Charter Township of Kalamazoo  
Minutes of the Zoning Board of Appeals  
Held on May 15, 2019**

10 A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was held on  
11 Wednesday, May 15, 2019.

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**Call to Order.**

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

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**Present Were:**

29 Chairman Jim Short  
30 Warren Cook  
31 Steve Leuty  
32 Fred Nagler  
33 Chris Mihelich

34 Absent was: None.

35 Also present were: Township Attorney Seth Koches and four members of the audience.

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**Roll Call.**

Chairman Short called the roll, noting that all ZBA members were present.

**Approval of the Agenda.**

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

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

**Approval of the Minutes of the February 20, 2019 ZBA Meeting.**

The first item on the agenda was approval of the minutes of the February, 20 2019 Zoning Board of Appeals meeting. The meeting minutes were provided to all ZBA members in their packets. There were no additions or revisions made to the minutes.

Cook moved, supported by Nagler, to approve the minutes of the February 20, 2019 ZBA meeting as presented. The motion passed unanimously. Mihelich signed the minutes and the same where provided to Hudson for transmission to the Township staff.

1 **Public Hearing.**

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**3738 E. Main Street – Special Use Conditions – Setback from residential zoning district for medical marijuana provisioning center.**

The first item on the agenda was a public hearing on the request of DNVK 3 LLC, 29500 Telegraph Road, Suite 250, Southfield, MI 48034, (applicant) for a 345-foot variance from the required 500-foot radius buffer from a residentially zoned parcel contained in Article 8, Section VV, Item 4.e.ii(11) of the Township Zoning Ordinance in order to use the property addressed as 3738 E. Main Street, Kalamazoo MI 49048 (Parcel No. 06-13-235-042) as a medical marijuana provisioning center, to be located within a 500-foot radius of a residentially zoned parcel. The applicant requested a variance to reduce the 500-foot radius buffer requirement to 155 feet. The subject property is approximately 1.25 acres and is located in the C-2 Commercial Corridor District Zoning Classification. The application indicated that the Township’s current Zoning Map depicts the residential area to the north as RM-2.

Short opened the public hearing and explained the procedures and rules to be followed during the same. Hudson prepared a staff report for the ZBA members, which was included in their member packets, and summarized it. Hudson said Article 18.02.B of the Township Zoning Ordinance lists Special Land Uses for the C-2 District Zoning Classification. Section 18.03.B.23 lists a marijuana provisioning center as a special land use, as authorized by the Medical Marijuana Facilities Ordinance, and subject to Article 8, Section 8.02.VV. Section 8.02.VV.4 contains the Site Development Standards for medical marijuana provisioning centers. Section 8.02.VV.4(e)ii and iii of the Township Zoning Ordinance states:

- ii. A marijuana provisioning center facility shall not be located within a 500-foot radius of any property occupied by:
  - 1. A public playground;
  - 2. A public park;
  - 3. Public housing;
  - 4. A religious institution;
  - 5. A public or private vocational school, college, junior college, or university;
  - 6. A state licensed child care center or preschool;
  - 7. Any public swimming pool, public or private youth activity facility, public outdoor recreation area (except trails), or public recreation facility;
  - 8. A youth center;
  - 9. A juvenile or adult half-way house;
  - 10. Correctional facility or rehab center;
  - 11. Property zoned R-1, R-2, RM-1, RM-2, RM-3, or MHP;
  - 12. Police and fire stations.

1           iii. Measurement of Buffers. For purposes of measuring the buffer distance, the  
2 buffered area identified in i. 1 and 2, and ii. 1-12 above shall be called the  
3 “protected use.” The distance shall be measured from the zoning district setback  
4 line of the above uses (i. 1 and 2, and ii. 1 through 10 plus 12) to the portion of  
5 the building, delineated with a firewall, housing the medical marijuana facility,  
6 except for (11) which shall be from the property line of the residential uses to  
7 the portion of the building, delineated with a firewall, housing the medical  
8 marijuana facility. For existing buildings on the protected use property which are  
9 lawfully nonconforming by reason of setback, the measurement shall be taken  
10 from the setback line regardless of nonconformity to the building housing the  
11 medical marijuana facility.

12  
13 Hudson said that the subject property is part of a 1.2 acre parcel on the south side of E. Main  
14 Street between Nazareth Road and Sprinkle Road. The lot is occupied by an existing commercial  
15 building. Hudson said the adjacent properties to the east and west are zoned C-2 and are  
16 vacant; the property to the south is zoned I-2 and is occupied by a gravel mine. The properties  
17 to the immediate north are zoned C-2 and are occupied by businesses. Hudson said there are  
18 five properties to the northeast, zoned RM-2, three of which are occupied by houses and the  
19 other two are vacant. Hudson said these five lots are over 395 feet deep and the north lot lines  
20 are 540 feet from the nearest corner of the building located on 3738 E. Main Street. Hudson’s  
21 report indicated that the subject property is over 250’ from the Comstock Township municipal  
22 boundary line. Hudson said the 2013 Kalamazoo Township Master Plan / Future Land use Map  
23 has the five properties north of E. Main Street, between Huntington Avenue and the Comstock  
24 Township municipal boundary line, designated for future use as “Commercial.”

25  
26 Andrew Rossell addressed the ZBA on behalf of the applicant and Ricky Dando, the seller of the  
27 subject property. Rossell said a site plan was submitted to the Township, and he introduced Tim  
28 Johnson, who worked on the proposed facility’s design. Rossell said Marvin Karana is the  
29 principal of DNVK, Inc., but could not be present for the meeting. Rossell acknowledged there  
30 were several residentially zoned parcels within the 500-foot radius buffer zone; he said the  
31 Township’s master plan/future land use calls for the area residential parcels to be rezoned to a  
32 Commercial District zoning classification. Rossell said the proposed facility will be a great  
33 addition to the community and will beautify the existing property. Rossell noted that the  
34 existing structure has been vacant for several years. Tim Johnson addressed the ZBA on behalf  
35 of the applicant, and he provided presentation materials to the members for review. Johnson  
36 said that the applicant is trying to model its business after Walgreen’s. Johnson said the  
37 applicant’s intent is not to be a problem in the community, but to offer a solution to individuals  
38 who need medical marijuana.

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40 Short asked whether the applicant intends to tear down the existing structure and noted that  
41 KABA determined the existing structure to be a dangerous building. Johnson said the plan is to  
42 completely gut and refurbish the existing structure as depicted in the diagrams provided to the  
43 ZBA. Short discussed the 500-foot radius buffer requirement between a medical marijuana  
44 provisioning center and a residentially zoned parcel. Hudson explained how to measure the

1 buffer area. Rossell said that the distance between the existing structure on the subject  
2 property to the closest residentially zoned parcel measured 155 feet. Short asked whether the  
3 structure could be moved further back on the subject property. Rossell said the plan is to utilize  
4 the existing structure. Leuty clarified the buffer as 155 feet from the structure located on the  
5 subject property to the residentially zoned parcel property line. Johnson discussed the buffer  
6 requirement and said that state law defers to the local ordinance to determine buffer  
7 zones/distances. Johnson noted that a required buffer radius is not a state requirement. Cook  
8 asked whether the applicant considered other sites and inquired how many other sites are  
9 available that satisfy the ordinance's requirements. Rossell said he was not sure, noting that he  
10 was not involved in the applicant's pursuit of the property.

11  
12 Short opened the public comment portion of the public hearing and invited any interested  
13 party to speak in support of or against the applicant's request for a variance. Chris Gordon  
14 described himself as an unconventional realtor and said there are five sites in Kalamazoo  
15 Township that satisfy the ordinance's requirements. Gordon said there are approximately five  
16 to six sites within the City of Kalamazoo and six sites in Portage that may accommodate medical  
17 marijuana facilities. Gordon said there are approximately 263,000 people in Kalamazoo County  
18 and asked how people who need medical marijuana may access these facilities. He said the  
19 subject property is near the bus line that is accessible to the public. Hudson noted that the  
20 Township received one letter objecting to the applicant's request for a variance. Sherine Miller  
21 asked whether anyone spoke to the occupants and/or property owners of the parcels located in  
22 the residentially zoned districts. Hudson said the property owners and occupants were  
23 provided written mailed notice of the applicant's request for a variance. Hudson said the  
24 Planning Commission decided not to protect non-conforming uses when it developed the  
25 medical marijuana facilities ordinance. Gordon said he spoke to one of the property owners  
26 who had no objection to the applicant's request for a variance.

27  
28 Hearing no additional public comment, Short closed the public comment portion of the public  
29 hearing and the ZBA entered into deliberations.

30  
31 Attorney Koches said Section 26.05.B.4 of the Township Zoning Ordinance, titled "Variances"  
32 contains the criteria used when reviewing a request for a variance; he read this Section to the  
33 ZBA. Section 26.05.B.4 states, in part:

- 34
- 35 a. The ZBA may grant a requested "non-use" variance only upon a finding that practical  
36 difficulties exist and that the need for the variance is due to unique circumstances  
37 peculiar to the property and not generally applicable in the area or to other properties  
38 in the same zoning district. In determining whether practical difficulties exist, the ZBA  
39 shall consider the following factors:
    - 40
    - 41 1. Strict compliance with restrictions governing area, setback, frontage, height,  
42 bulk, density or other non-use matters, will unreasonably prevent the owner  
43 from using the property for a permitted purpose or will render ordinance  
44 conformity unnecessarily burdensome.

2. The variance will do substantial justice to the applicant, as well as to other property owners.
3. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
4. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors. (For example, a variance needed for a proposed lot split would, by definition, be self-created, so such a variance typically would not be granted.

b. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings.

Attorney Koches provided Short with the Notice of ZBA Decision form for the members to consider during deliberations. Short summarized the applicant's request for a variance, confirming that the applicant's intent was to renovate the existing structure. Leuty said that the applicant would not need a variance if the five residentially zoned parcels were re-zoned to a Commercial District zoning classification. Short discussed the practical difficulty standard of review, noting there are limited properties within the Township available to accommodate a medical marijuana facility. Nagler said he is the ZBA member that represents the Planning Commission. Nagler said the Planning Commission was heavily involved in drafting the Township's medical marijuana facilities ordinance. Nagler noted that a lot of pains were taken in creating the ordinance and he was not comfortable granting the applicant's request for a variance; he preferred the residentially zoned parcels to be re-zoned to Commercial. Cook asked how the Planning Commission determined a 500-foot radius buffer was appropriate. Nagler explained the research the Planning Commission utilized to conclude that a 500-foot buffer. Mihelich discussed the 250-foot boundary buffer requirement to adjacent municipalities. Mihelich agreed that granting the applicant's request for a variance would set a detrimental precedent. Rossell asked whether the applicant was precluded from submitting a subsequent request for a variance on the same property if the ZBA denied the request. Hudson said the ordinance precludes the applicant from re-applying for one year. Rossell discussed issues individuals may have with obtaining mortgages on non-conforming lots/uses. Hudson said a variance will not be needed if the residentially zoned parcels within the 500-foot buffer radius are rezoned.

Leuty noted that the Township recently re-zoned two parcels to the west of Nazareth Road to Commercial and the homeowners were unable to obtain mortgages. Leuty agreed that a variance would not be needed if the residentially zoned parcels within the 500-foot buffer radius were re-zoned. Short agreed as well. Leuty and Nagler discussed whether the subject property was serviced by municipal sewer and water.

1 Short summarized the Notice of Decision form. The ZBA considered the first standard of review  
2 for a request for a variance contained in Section 26.05.B.4 of the Zoning Ordinance and  
3 concluded that strict compliance with restrictions governing area, setback, frontage, height,  
4 bulk, density or other non-use matters will not unreasonably prevent the owner from using the  
5 property for a permitted purpose or will render ordinance conformity unnecessarily  
6 burdensome. The ZBA considered the second standard of review contained in for a request for  
7 a variance contained in Section 26.05.B.4 of the Zoning Ordinance and concluded that the  
8 variance will do substantial justice to the applicant. The ZBA considered the third standard of  
9 review contained in for a request for a variance, Section 26.05.B.4 of the Zoning Ordinance, and  
10 concluded that a lesser variance than requested will not give substantial relief to the applicant  
11 and/or be consistent with justice to other property owners. The ZBA considered the fourth  
12 standard of review contained in for a request for a variance, Section 26.05.B.4 of the Zoning  
13 Ordinance, and concluded that the problem and resulting need for the variance has been self-  
14 created by the applicant and/or the applicant's predecessors.

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16 Cook moved, supported by Mihelich, to deny the request of DNVK 3 LLC, 29500 Telegraph Road,  
17 Suite 250, Southfield, MI 48034, for a 345-foot variance from the required 500-foot radius  
18 buffer from a residentially zoned parcel contained in Article 8 Section VV, Item 4.e.ii(11) of the  
19 Township Zoning Ordinance in order to use the property addressed as 3738 E. Main Street,  
20 Kalamazoo MI 49048 (Parcel No. 06-13-235-042) as a medical marijuana provisioning center to  
21 be located within a 500-foot radius of a residentially zoned parcel because:

- 22
- 23 1. Strict compliance with restrictions governing area, setback, frontage, height, bulk,  
24 density or other non-use matters will not unreasonably prevent the owner from using  
25 the property for a permitted purpose or will render ordinance conformity unnecessarily  
26 burdensome;
  - 27  
28 2. A lesser variance than requested will not give substantial relief to the applicant and/or  
29 be consistent with justice to other property owners;
  - 30  
31 3. The problem and resulting need for the variance has been self-created by the applicant  
32 and/or the applicant's predecessors.

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34 The motion passed unanimously. Short initialed and executed the Notice of Decision form.  
35 Hudson made copies and Attorney Koches personally served Rossell a copy of the Notice of  
36 Decision.

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39 **Old Business.**

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41 Distribution of revised Rules of Procedure.

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43 The ZBA briefly discussed revising a Rule regarding when meeting minutes may be adopted.

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1 **New Business.**

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3 None.

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

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7 **Citizen Comments.**

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9 None.

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11 **Correspondence received.**

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13 Hudson received and distributed the new Planning and Zoning pamphlet to the ZBA members.

14

15 **Board Member Comments.**

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17 Leuty discussed the Township’s five year master plan for parks. Leuty discussed several  
18 strategies for development of the plans. Leuty said the Township Board discussed the  
19 commercialization of recreational marijuana and noted a municipality must opt out, otherwise  
20 it will be locked into authorizing recreational marijuana. Leuty said he wants to know the state’s  
21 intent regarding recreational marijuana before making a decision. Hudson said there is a ZBA  
22 meeting next month. The request is a setback variance regarding a solar energy facility on  
23 county-owned property near the business loop. Mihelich discussed California’s approach for  
24 recreational marijuana.

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

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28 Nagler reported on the recent planning commission meeting.

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30 **Adjournment.**

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32 There being no additional business before the Zoning Board of Appeals, upon motion of Cook,  
33 supported by Mihelich, and unanimous approval, the meeting was adjourned at 8:20 p.m.

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35 Respectfully Submitted,

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40 Chris Mihelich, Secretary of the Planning  
41 Commission

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42 Synopsis of Actions  
43 ZBA meeting May 15, 2019

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- 1        1. The request of DNVK 3 LLC, 29500 Telegraph Road, Suite 250, Southfield, MI 48034, for  
2        a 345-foot variance from the required 500-foot radius buffer from a residentially zoned  
3        parcel contained in Article 8 Section VV, Item 4.e.ii(11) of the Township Zoning  
4        Ordinance in order to use the property addressed as 3738 E. Main Street, Kalamazoo MI  
5        49048 (Parcel No. 06-13-235-042) as a medical marijuana provisioning center to be  
6        located within a 500-foot radius of a residentially zoned parcel was denied.  
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