

**OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS**

**MINUTES OF A RESCHEDULED REGULAR VIRTUAL MEETING HELD
JANUARY 28, 2021**

Agenda

ELECTION OF 2021 OFFICERS – CHAIR AND VICE CHAIR

ANNUAL BOARD VARIANCE REVIEW TRAINING

**PUBLIC HEARING: SITE PLAN REVIEW AND VARIANCE REQUEST FOR
LOADING DOCK ADDITION**

SHOPONE, ON BEHALF OF DFG-MAPLE HILL LLC, REQUESTED RELIEF FROM SECTION 52.60 OF THE ZONING ORDINANCE IN ORDER TO DIVIDE THE EASTERN MOST UNIT AT 5022 W. MAIN STREET IN HALF AND CONSTRUCT A NEW LOADING STATION ON THE EAST SIDE OF THE BUILDING TO SERVICE THE NEW UNIT.

A virtual meeting of the Oshtemo Charter Township Zoning Board was held Thursday, January 28, 2021, at approximately 3:00 p.m.

MEMBERS PRESENT:

Neil Sikora, Chair
Micki Maxwell, Vice Chair
Dusty Farmer
Fred Gould
Anita Smith
(All attending within Oshtemo Township)

MEMBERS ABSENT:

Fred Antosz
Ollie Chambers

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Colten Hutson, Zoning Administrator and Martha Coash, Meeting Transcriptionist.

Guests present included Jack Ventimiglia, V.P of Construction, SHOPOne, Melissa Miller, Architect of Record, Bob Bake, SHOPOne COO, and Cathy Schultz, Metro Transit.

Call to Order and Pledge of Allegiance

Chairperson Sikora called the meeting to order and invited those present to join in reciting the “Pledge of Allegiance.”

APPROVAL OF AGENDA

After determining there were no changes needed, Chairperson Sikora asked for a motion.

Mr. Gould made a motion to approve the agenda as presented. Ms. Maxwell seconded the motion. The motion was approved unanimously.

Chairperson Sikora moved to the next agenda item.

APPROVAL OF THE MINUTES OF DECEMBER 15, 2020

The Chair asked if there were any additions, deletions or corrections to the minutes of December 15, 2020. Hearing none, he requested a motion.

Ms. Maxwell made a motion to approve the Minutes of December 15, 2020 as presented. Ms. Farmer seconded the motion. The motion was approved unanimously.

Chairperson Sikora moved to the next agenda item.

ELECTION OF 2021 OFFICERS – CHAIR AND VICE CHAIR

Chairperson Sikora asked for nominations for the positions of Chair and Vice Chair for 2021.

Mr. Gould nominated Mr. Sikora for the position of Chair.

Mr. Sikora indicated he was willing to accept the nomination to continue as Chair for 2021. No other nominations were made.

Ms. Farmer seconded the nomination. Mr. Sikora was elected unanimously.

Mr. Gould nominated Ms. Smith for the position of Vice Chair.

Ms. Smith indicated she was willing to accept the nomination to continue as Vice Chair for 2021. No other nominations were made.

Ms. Maxwell seconded the nomination. Ms. Smith was elected unanimously.

Chairperson Sikora proceeded to the next agenda item.

ANNUAL BOARD VARIANCE REVIEW TRAINING

Attorney Porter and Planning Director Lubbert, at the request of the Board's Chair, held a training/refresher course for ZBA members on the review criteria for variances. The information provided was based on the Michigan Chapter of the American Planning Association's Making Great Communities Happen: Zoning Board of Appeals ToolKit.

Topics covered were:

- What is the Zoning Board of Appeals (ZBA) and what do they do?
- What is a Variance
- How should a Variance be reviewed?
- Collecting Information: Site visits and Ex Parte Communication

Discussion following clarified that:

- Self-created hardship does not necessarily pertain to the current owner. A self-created hardship could have been created by a previous owner.
- A variance is tied to property not to the owner; if ownership changes hands, the variance remains.
- If an applicant tries to engage a Zoning Board of Appeals member in conversation about their application, they should be told it is not appropriate to discuss outside a public meeting and referred to the Planning Director.

Chairperson Sikora thanked Ms. Lubbert and Attorney Porter for their presentation and confirmed as there can be both new information as well as new Board members, it will be good to repeat the training at the beginning of every year.

The Chair moved to the next agenda item and asked Mr. Hutson for his presentation.

PUBLIC HEARING: SITE PLAN REVIEW AND VARIANCE REQUEST FOR LOADING DOCK ADDITION SHOPONE, ON BEHALF OF DFG-MAPLE HILL LLC, WAS REQUESTING RELIEF FROM SECTION 52.60 OF THE ZONING ORDINANCE IN ORDER TO DIVIDE THE EASTERN MOST UNIT AT 5022 W. MAIN STREET IN HALF AND CONSTRUCT A NEW LOADING STATION ON THE EAST SIDE OF THE BUILDING TO SERVICE THE NEW UNIT.

Mr. Hutson said the applicant, on behalf of DFG-Maple Hill LLC, was requesting relief from Section 52.60 of the Zoning Ordinance in order to divide the eastern-most unit at 5022 W Main Street within the Maple Hill Pavilion in half, and to construct a new loading station to service the proposed front unit.

He indicated the applicant was requesting relief from Section 52.60 of the Zoning Ordinance which governs where loading and unloading operations for businesses can take place, in order to add a 400 SF loading dock to the eastern elevation of the building. Section 52.60 of the Zoning Ordinance requires that all loading and unloading operations must be carried on entirely within the side or rear yard of the lot, parcel or building site, on a paved surface, and shall not interfere with pedestrian or vehicular movement.

5022 W Main Street is located within the Maple Hill Pavilion, an outdoor shopping outlet, along the north side of W Main Street, east of US-131. The building site is on the eastern most side of the shopping outlet, which abuts W Main Street and Drake Road. Formerly Value City Furniture, the vacant 46,980 SF space would be divided to service a Burlington store occupying 26,944 SF for the front portion of the space, with the remaining square footage to accommodate a future commercial use in the rear. The addition along the eastern elevation would provide a loading station to service the store located in the front half where delivery trucks could unload goods and other materials. The existing loading dock on-site would remain and serve as a loading and unloading area for the future retail space in the rear. He noted any variance request being proposed requires review and approval from the Zoning Board of Appeals.

Mr. Hutson explained minor site plan amendments generally go through a formal review process that is completed at the administrative level. However, when the internal review was underway, staff found that the project could not be approved administratively due to the proposal conflicting with the Zoning Ordinance, particularly Section 52.60: Loading and Unloading. The applicant requested to appeal staff's determination of denial to the ZBA, noting that relocating the proposed loading dock to meet code standards was not feasible. Such an appeal is allowed per Section 64.20: Applicability of the Zoning Ordinance. Approval of this site plan by the Zoning Board of Appeals would require a variance to Section 52.60: Loading and Unloading.

Mr. Hutson said when reviewing this site plan and variance request, there are two sets of criteria that need to be considered: 1) the general Site Plan Review criteria outlined in Section 64, and 2) the Off-Street Parking of Motor Vehicles criteria pertaining to loading and unloading operations outlined in Section 52.60. He provided the following analysis of the proposal against these two Sections.

SECTION 64: SITE PLAN REVIEW

General Zoning Compliance:

Zoning: 5022 W Main Street is zoned C: Local Business District. Adjacent to the east is low-density residential located within the City of Kalamazoo. All adjacent properties to the north, south, and west of the project area are zoned C: Local Business District. The proposed retail space is considered a permitted use within the C: Local Business District. Additionally, the percentage of land covered by buildings for Maple Hill Pavilion is 13.9%. **Criterion met.**

Access and Circulation

Access: The proposed site has established interior drives that travel adjacent to the storefronts within Maple Hill Pavilion. All aisles within the project area are approximately 30 Ft wide. There are several curb cuts on W Main Street and Drake Road to access the subject site.

The 400 SF addition to the east elevation proposes several challenges in terms of achieving ordinance compliance and life/safety. The addition will be used for loading and unloading activities for the commercial space located in the front half of the building. Per *Section 52.60 Loading and Unloading*, the code section states that “Space for all necessary loading and unloading operations for any commercial, industrial or other use must be provided in addition to the required off-street parking space. All loading and unloading operations must be carried on entirely within the side or rear yard of the lot, parcel or building site, on a paved surface and shall not interfere with pedestrian or vehicular movement”. Front yards are defined in the Zoning Ordinance as “Open space extending across the full width of a lot, parcel or building site, between the front property line of the lot, parcel, or building site and the nearest point of the building, or a porch or other projection thereof. The depth of such yard is the average horizontal distance between the front lot, parcel or building site property line and the nearest point of the building, or a porch, or other projection thereof”. Lot, parcel or building site frontage is defined in the Zoning Ordinance as “The length of the front property line abutting the dedicated public road right-of-way or private street easement”. Since the subject space shares frontage along two streets, the proposed loading dock is located within the front yard.

Additionally, the loading dock presents a safety concern to motorists and pedestrians visiting the shopping complex. The delivery trucks are proposed to enter the facility from the north side of the building and navigate to the eastern most side of the shopping mall. A turning template illustrates the delivery trucks will protrude into the intersection within the shopping outlet’s interior drive and back into the respective loading zone. This means that large vehicles will be stopping and backing up in an area that is not designed to have such activities, creating the potential for accidents not just with vehicles coming and going from this shopping center but also with pedestrians. There is a prominent Metro Transit bus stop that is adjacent to the proposed loading dock. Metro Transit also has a 17 Ft x 6 Ft bus shelter for its riders that visit the shopping mall. This particular bus stop is the 5th heaviest used bus stop in Kalamazoo County as it is served by three different fixed-routes. At times there can be a total of three 40 Ft buses that arrive at the same time, requiring over 120 Ft for stacking space. Metro Transit’s fixed-route system begins at 6am, which creates a conflict with the delivery times being proposed. The majority of the users of this service travel south to get to the other commercial businesses in this shopping strip. The proposed truck dock would directly cross or “interfere” with their route. For these reasons, the addition of the loading dock will most likely require said bus stop and bus shelter to be relocated. METRO has provided a letter expressing their

concerns with this proposal. If this site plan is approved, eventually there would be an increase in foot traffic due to visitors wanting to go to the future commercial use occupying the space in the rear. It should be noted that Metro Transit has been working diligently with the applicant in attempt to find an alternative bus stop location to help mitigate safety concerns. However, in order to get to the rear retail space, pedestrians would have to walk around the loading dock obstruction, regardless if the Metro bus stop is there or not.

The applicant has expressed that deliveries will occur from 6am-8am, Monday through Saturday, and that such deliveries will happen outside of normal business hours. The applicant also noted that the loading and unloading activities are normally a quick process which involves rolling approximately 12-20 pallets off of a truck into back of house space. They added that conflict with pedestrian and vehicular traffic in the mall during this time would be minimal. However, it should be considered that the proposed deliveries cannot be guaranteed to happen during said times nor will the front commercial space always be a Burlington store in the future. A different commercial user could occupy the space and have different hours of operations, incompatible delivery times, or larger/longer deliveries. **Criterion not met.**

Parking

Maple Hill Pavilion currently has a total of 1,996 parking spaces, excluding the outlots located on the premises, which include Starbucks, Finley's, and other commercial users that abut W Main Street. There are a total of 475 parking stalls which are intended to service Hobby Lobby and the current 46,980 SF vacant space. Of the 475 parking stalls on-site, 207 of them are not striped. The said unstriped spaces are located in the rear of the subject building site. All existing parking spaces are 10' x 20'. Businesses with retail sales require one parking space per each 150 SF of net floor area. Hobby Lobby is 56,455 SF, which requires 376 parking stalls. The vacant 46,980 SF space would require 313 parking stalls. This means that there would be a total of 689 parking stalls required to serve the two commercial spaces. Therefore, the site currently only has approximately 69% of the minimum required parking spaces necessary (475 spaces currently). The parking shortage is attributed to code requirements evolving over the years, as parking requirements have gotten stricter for reviewing developments. The applicant wished to eliminate two parking spaces for a future dumpster to service the retail store to be located in the front half of the vacant 46,980 SF space. This would further decrease the total parking spaces to 473. However, with the entire outdoor shopping outlet having a total of 1,996 parking stalls to service the 275,283 SF of commercial space (excluding said outlots), 1,835 parking stalls are required. Since Maple Hill Pavilion has approximately 108% of the minimum required parking spaces allowed, the surplus parking for the entire site potentially warrants a deviation. **Criterion met.**

Easements

There are a series of existing easements located throughout Maple Hill Pavilion, ranging from ingress/egress easements to utility easements. There are no easements in place in which would preclude construction of the proposed loading dock, as the 400 SF addition will not be an encroachment. **All easement requirements are met.**

Shared Use Path

Non-motorized facilities already exist on W Main Street and Drake Road adjacent to the project area. This portion of the review is not applicable.

Sidewalk

The applicant was proposing a 4 Ft sidewalk along the east side of the loading dock. Pedestrians are currently used to having an existing sidewalk width of 40 Ft, which allows a form of separation. Reducing the width to 4 Ft is a dramatic decrease. ADA persons visiting the outdoor shopping outlet will have a difficult time using the proposed non-motorized facility. Even in normal circumstances it has been found pedestrians struggle walking side by side on a 4 Ft sidewalk. This will cause an overflow of pedestrians forced to walk in the southbound lane, causing a potential safety hazard. The minimum width for sidewalks per ADA is 5 Ft. Although this is private, 5 Ft sidewalks shall be considered. Nevertheless, Section 57.90 of the ordinance requires that an interior sidewalk network be provided at the time of a site plan review unless the reviewing body grants a deviation from this provision as such a sidewalk connection from the building to the road would enhance accessibility of the overall non-motorized network. The applicant was currently not proposing a connector from the sidewalk abutting the shopping outlet to the sidewalk along Drake Road. **Staff recommended if the site plan is approved a 5 Ft wide sidewalk connector from the shopping outlet to the sidewalk on Drake Road be installed and the sidewalk along the proposed loading dock be expanded to a minimum of 5 Ft. Criterion not met.**

Building Design

Building Information

Exterior materials of the 400 SF loading dock were not shown in the site plans provided. If the site plan was approved and the variance request granted, providing said exterior materials for the loading dock shall be a condition of approval. Proposed materials shall aesthetically match that of the existing building.

The applicant provided renderings of the east side of Maple Hill Pavilion where the loading dock and the new tenant space will be located. The new tenant space will be secluded from all other activity occurring in the outdoor shopping outlet due to the design and placement of the loading dock. This could

potentially make the space more unattractive for future businesses and commercial users. The applicant has provided screening in the form of trees, shrubs, and other vegetation on the east side of the loading dock in an effort to disguise the loading dock from motorists and mall visitors from Drake Road. The submitted site plan also proposes to keep one of the three existing trees in the walkway south of the proposed loading dock and install a natural buffer of five evergreen trees and shrubs to screen the dock from W Main and those entering the development site. Although this is a good effort to screen the proposed dock, the location of the loading and unloading dock is on a prominent corner of this development and if approved it will become part of the visual experience when visiting this shopping center.

Landscaping

The applicant was proposing landscaping along the east side of the loading dock wall. Such landscaping consists of trees, shrubs, and other vegetation to provide as a source of screening material for the loading dock. The applicant was proposing to install evergreen trees south of the loading dock. Staff noted the landscaping in the rendering is inconsistent with what was being proposed on the landscaping plan. The renderings show landscape islands in the parking lot and in front of the proposed new tenant space as the landscaping plans do not. Also, the renderings show the plantings wrapping around the loading dock to its north while the site plan does not. The proposed garbage disposal container is not shown in the renderings. Only the landscaping shown on the landscaping plan can be required unless the reviewing body should require it be added to the landscape plan as a condition of approval.

Lot Dimensions

Maple Hill Pavilion is 48.56 acres (2,115,273.60 SF) and has approximately 1,835.54 Ft of road frontage along W Main Street and Drake Road. The minimum area requirements for commercial properties with water and sewer are 13,200 SF. The minimum frontage requirements for commercial properties with water and sewer is 120 Ft. **Criterion met.**

Setbacks

Buildings within the C: Local Business District have a minimum front yard setback of 70 Ft, unless a larger setback is required per ordinance. Buildings adjacent to W Main Street shall have a minimum front yard setback of 170 Ft from the centerline of the street right-of-way. Buildings adjacent to Drake Road shall have a minimum front yard setback of 120 Ft from the centerline of the street right-of-way. The 400 SF addition to the east side of the building satisfies such setback requirements, as the loading dock would be approximately 250 Ft from centerline of Drake Road and approximately 650 Ft from centerline of W Main Street. **Criterion met.**

Waste Disposal Container

The applicant was proposing a waste disposal container to separately service the front retail space from the rear commercial space within the subject building. The site plan shows the waste disposal container being in the east parking lot adjacent to Drake Road and is proposed to eliminate two parking spaces. Code Section 53.90 Screening of Trash and Recycling Containers states that all outside trash and recycling disposal containers shall be screened on all sides with an opaque fence or wall and gate at least as high as the container, but no less than six (6) feet in height, and shall be constructed of material that is compatible with the architectural materials used in the site development. The Planning Commission or Zoning Board or Appeals, at its discretion, may approve alternative methods of screening that meet the intent of this Article. The code also states that **containers and enclosures shall be located away from public view insofar as possible, and enclosures shall be situated so that they do not cause excessive nuisance or offense to occupants of nearby buildings.** Screening and gates shall be of a durable construction. Chain link fences with opaque slats are not permitted. The doors for the dumpster being proposed is black galvanized steel. The screening would contain 6 Ft tall concrete brick. Where the applicant is wishing to place the dumpster in the project area goes against the code's intent. The proposed dumpster will be clearly visible from Drake Road and is located by the entrance of the proposed second commercial unit. This dumpster location also presents another safety concern as large vehicles will be stopping and backing up in an area that is not designed for such movements. This will further disrupt the traffic flow for the interior drive throughout the shopping outlet. If the site plan is approved, staff recommended that the proposed dumpster be relocated. **Criterion not met.**

Fencing

No changes to the current onsite fencing were proposed. This portion of the review is not applicable.

Lighting

No changes to the current onsite lighting were proposed. This portion of the review is not applicable.

Signs

Signage will be reviewed in detail at time of the sign permit application submission. This portion of the review is not applicable.

SECTION 52.60: LOADING AND UNLOADING (VARIANCE) - APPLICANT'S RATIONALE

The applicant provided the following rationale for this variance request from Section 52.60:

1. Splitting the space offers the best opportunity to lease the vacancy as it would be difficult to lease the entire vacancy to a single user.
2. During negotiations with Burlington Stores, it was made clear that Burlington Stores would not enter into a Lease if the loading dock was not immediately adjoined to the Demised Premises and eliminated the opportunity to use the rear of the vacancy.
3. ShopOne approved a loading dock alongside the Drake Road Frontage with careful consideration towards screening and pedestrian safety as described in the submitted plans and renderings.
4. Burlington Stores has also indicated that loading/unloading activities are likely to take place Monday through Saturday from 6-8AM, outside of store hours.
5. ShopOne does not have any records nor could Metro produce records of an agreement allowing the bus stop in its current location.
6. ShopOne feels the Burlington Stores will bring valued commerce to the Township and the Shopping Center, whereas a 46,980 square foot vacancy would only offer blight to an otherwise great shopping center.

STANDARDS OF REVIEW - STAFF ANALYSIS

The Michigan courts have applied the following principles for a dimensional variance, which collectively amount to demonstrating a practical difficulty, as follows:

1. Special or unique physical conditions and circumstances exist which are peculiar to the property involved and which are not generally applicable to other properties in the same district.
2. Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use; or would render conformity to the ordinance unnecessarily burdensome.
3. The variance is the minimum necessary to provide substantial justice to the landowner and neighbors.
4. The problem is not self-created.
5. Public safety and welfare.

Staff analyzed the request against these principles and offered the following information.

STANDARDS OF APPROVAL OF A NONUSE VARIANCE (PRACTICAL DIFFICULTY):

*Standard: Unique Physical Circumstances
Are there unique physical limitations or conditions which prevent compliance?*

Comment: 5022 W Main Street is located on a corner and has road frontage adjacent to Drake Road and W Main Street. W Main Street serves as the shopping center's targeted audience in terms of commuters. Signage advertising all the businesses within the shopping center is located on W Main Street due to the shopping center being faced/directed towards W Main Street.

There is currently no signage adjacent to Drake Road advertising the businesses within Maple Hill Pavilion. Generally, a property would have one front, two sides, and one rear. With the unit under consideration on a corner, having two front yards, it does present additional building restrictions that other non-corner units do not have. However, there are many instances where commercial properties have frontage on two streets and this is typically seen as an advantage in visibility and a benefit to the businesses occupying the space.

An additional note is that the space in question used to be an indoor shopping center that was repurposed. Repurposing a use for another is encouraged but can present unique challenges as a developer does not have the same flexibility to shape a space to a user's needs as well as someone building something from scratch.

*Standard: Conformance Unnecessarily Burdensome
Are reasonable options for compliance available?
Does reasonable use of the property exist with denial of the variance?*

Comment: It is the applicant's desire to not occupy the entire 46,980 SF vacant commercial space that triggered this variance request. It is the applicant's belief that if the space is not divided that it will be difficult to lease to one retailer due to the store's size. It could be argued that if the space was divided that the commercial space located in the rear would be at a disadvantage and would be difficult to lease due to its seclusion from other retailers in Maple Hill Pavilion. A designated truck docking station for loading and unloading purposes already exists in the rear of the building to service the existing unit. An additional loading dock is neither a requirement nor a necessity. The desire to divide the space has created new challenges. Normal use of the property would be maintained if the reviewing body denied the variance request. Other floor plans or locations for a loading dock could be explored.

*Standard: Minimum Necessary for Substantial Justice
Applied to both applicant as well as to other property owners in district.
Review past decisions of the ZBA for consistency (precedence).*

Comment: In researching past Zoning Board of Appeals decisions regarding relief for loading zones, Planning Department staff identified two comparable cases, one of which was offered relief through a Planned Unit Development. It should be noted that the two cases found pertain to the front yard and did not involve interference of pedestrian/vehicle movements within a loading and unloading area. These findings are described below.

1. Costco, 5100 Century Avenue, 12/17/2013: The Costco store has frontage on W Michigan Avenue that runs diagonal to the building.

Additionally, Century Avenue surrounds the store along three sides of the building. There was only one small area of the building that did not immediately front a street and it is the location of a stormwater retention facility. The applicant sought, and was granted, relief from now *Section 52.60: Loading and Unloading* because the Zoning Board of Appeals found that there were no opportunities to develop a loading/unloading area that would not be adjacent to a roadway. Plantings were installed along W Michigan Avenue to provide screening for the loading area. This loading dock is well away from interfering with any non-motorized facilities and motorists.

2. *National Flavors, 7700 Stadium Drive, 08/9/2016*: National Flavors is a manufacturing facility located within the I-1: Industrial District. It is located on a corner property and has frontage on Stadium Drive and Stadium Park Way. The property was situated in such a fashion that the proposed loading dock would have been visible on all four exterior walls. A deviation was granted by the Zoning Board of Appeals because there were no opportunities to develop a loading dock station without it not being adjacent to a roadway or being visible from motorists. There was no conflict with pedestrians and motorists.

Standard: Self-Created Hardship
Are the conditions or circumstances which resulted in the variance request created by actions of the applicant?

Comment: 5022 W Main Street is the eastern most commercial space within the outdoor shopping outlet. It is the applicant's desire to divide the existing commercial space which triggered this variance request. The reasoning behind the variance request is that the applicant believes the existing commercial space is too large to retain a permanent retail business and that it will remain vacant if the space is not divided. It should be noted that when the commercial space was originally converted, it was intentionally split to create this 46,980 SF unit to facilitate retail space for one large commercial user. Neither the splitting of the space nor the addition of the loading dock is required nor necessary.

Standard: Public Safety and Welfare
Will the variance request negatively impact the health, safety, and welfare of others?

Comment: The proposed loading dock location presents a life and safety issue for motorists and pedestrians visiting the shopping complex. Delivery trucks will protrude into intersections within the shopping outlet's interior drive in order to back into the respective loading zone. Large vehicles will be stopping and backing up in an area that is not designed to have such activities. The possibility of a collision with a motorist or pedestrian visiting the shopping mall is much more likely to occur due to the loading dock

being placed near non-motorized facilities and a frequently used interior drive. If the variance request is granted, eventually there would be an increase in foot traffic due to visitors wanting to go to the future commercial use occupying the space in the rear. It should be noted that Metro Transit has been working diligently with the applicant in an attempt to find an alternative bus stop location to help mitigate safety concerns. However, in order to get to the rear retail space, pedestrians would have to walk around the loading dock obstruction, regardless whether or not the Metro bus stop is there.

POSSIBLE ACTIONS

Mr. Hutson outlined the following possible actions:

- Motion to approve as requested (conditions may be attached)
- Motion to approve with an alternate variance relief (conditions may be attached)
- Motion to deny

A motion should include the findings of fact relevant to the requested variance. Based on the staff analysis, the following findings of fact are presented:

- Support of variance approval
 - A corner lot places additional restrictions on this property – it can be considered a unique physical circumstance.
 - The site in question is the result of a redevelopment of an indoor shopping center which creates unique challenges.
- Support of variance denial
 - The variance request is a hardship that is self-induced, as the commercial user could utilize the entire building space and existing loading dock area located at the rear of the building. Other floor plans or locations for a loading dock could be explored.
 - The variance request, if approved, would interfere with vehicular and pedestrian movement, creating a safety issue.
 - Without relief, the property can still accommodate a commercial space, as allowed per the Zoning Ordinance.
 - Review of past decisions from the Zoning Board of Appeals found that the two cases where the applicants were granted relief did not involve life and safety concerns. The variance request under consideration encounters frequent vehicular movements and foot traffic.

Possible motions for the Zoning Board of Appeals to consider include:

1. **Site Plan and Variance Approval.**

The Zoning Board of Appeals approves the site plan and variance request due to the property's configuration and unique history that limits its current use with the following conditions:

- All deliveries to the loading dock shall occur between 6am-8am.
- An updated site plan shall be submitted and approved by the Township prior to building permit issuance showing the following:
 - A 5 Ft wide sidewalk connector from the sidewalk adjacent to the shopping center to the sidewalk along Drake Road prior to occupancy.
 - The interior sidewalk along the building be increased to a minimum width of 5 feet.
 - The proposed dumpster will be relocated to meet the intent of the code
 - The Metro bus stop be relocated appropriately – to be coordinated with Metro.
- A parking deviation is granted to allow for the placement of the dumpster.
- The Applicant shall submit architectural details of the loading dock prior to building permit issuance.
- The Applicant shall update the elevation renderings and landscaping plan so that both are consistent with each other prior to building permit issuance. The landscaping plan shall meet ordinance requirements.
- Applicant to update signage plan and to submit and receive approval from the Planning Department prior to occupancy.
- A Soil Erosion and Sedimentation Control Permit from the Kalamazoo County Drain Commissioner's Office be obtained prior to building permit issuance.

2. **Site Plan and Variance Denial**

The Zoning Board of Appeals denies the site plan and variance request as the need for the variance is a self-created hardship, conformance with the code is not unnecessarily burdensome as reasonable use of the space will remain if denied, and approval would create a safety issue for both vehicular and pedestrian movement throughout the site.

Chairperson Sikora thanked Mr. Hutson for his presentation and asked him about the rationale for the parking deviation.

Mr. Hutson explained the entire outdoor shopping outlet has a total of 1,996 parking stalls to service the 275,283 SF of commercial space (excluding said outlots), 1,835 parking stalls are required. Since Maple Hill Pavilion has approximately 108% of the minimum required parking spaces allowed, the surplus in parking for the entire site potentially warrants the requested deviation.

Ms. Smith asked whether a hallway to the current loading dock could be provided from the current building.

Ms. Lubbert indicated that would be a question appropriate for the applicant.

Ms. Maxwell asked if the variance condition limiting deliveries from 6 – 8 a.m. would still apply if a business other than Burlington were to locate there in the future.

Ms. Lubbert said the variance requirement would run with the property but is based more on an honor system and would be difficult to enforce.

Ms. Farmer added that enforcement would be complaint based. She asked what would happen with the Metro bus stop.

Mr. Hutson said the proposed loading dock is located right where the current bus stop and shelter is now.

Ms. Lubbert said the applicant is working with Metro Transit but a plan has not been finalized. An agreement could be a condition of approval prior to permit issuance.

Mr. Sikora asked whether this is the only place in the Township where a business has two front yards.

Mr. Hutson said both Costco and National Flavors, a manufacturing facility located at the corners of Stadium and Stadium Parkway have loading docks seen by motorists and pedestrians from more than one side.

Ms. Lubbert added that commercial stores on corners are common and seen as a positive feature in that they offer double frontage and exposure.

Hearing no further questions, the Chairperson invited the applicant to speak.

Mr. Jack Ventimiglia, ShopOne, indicated he was present along with several other members of his team and thanked the Board for the opportunity to present their case. He said a lease has been signed with Burlington, a first class retailer, for 27,000 of the 50,000 SF available. Not dividing the property could possibly mean the property would remain vacant due to such a large footprint, which may be difficult to lease.

He responded to Ms. Smith's question about a hallway to the loading dock, saying that was considered originally but was rejected by Burlington.

Mr. Ventimiglia said they tried to not split the property but modification of the space presents a difficult, unique environment. Splitting it adds a significant cost for the landlord. He said an ADA sidewalk requires 36" width. They planned on 4 feet for the sidewalk connector but are willing to provide 5 feet and lighting to comply with what is required by the Township.

He indicated there would be minimal traffic at the 4-way stop area except for the Metro Transit buses. There would not be much traffic besides deliveries between 6 and 8 a.m. Burlington has a long term, 20 year lease so would not likely leave anytime soon,

but if they did leave early the landlord would have control and any future lease would include the Township's requirements.

Mr. Ventimiglia said he was working with Kalamazoo Metro representatives diligently regarding a relocation of the bus stop and understands the importance of bus service. Relocation could take from 6 months to a year; the current stop could be retained until then.

He pointed out that at the other end of the pavilion Dunham's has a rear dock with no screening right across from the traffic way. ShopOne is taking more measures for pedestrian safety and will work with the Township to revise their renderings to provide proper screening. The location of the trash receptacle is not ideal placement and they have explored several options including a split face decorative lock, which cannot be seen through easily. He noted there is also a trash receptacle along the Target parcel.

He thanked the Board for their consideration and asked whether they had questions.

Ms. Melissa Miller, Architect, said the modified truck access could avoid the 4-way intersection and restriping and signage could be provided. Previously, trucks entered the intersection to turn and back into the dock.

Chairperson Sikora said trucks coming from behind and exiting differently, not to disturb front tenants is preferable.

Mr. Ventimiglia said they could assure deliveries would not come from the front side of the shopping center; those leaving would probably cross the egress on the south side of the property onto Drake Road.

Mr. Bob Bake, SHOPOne, thanked the Township and Board for their time. He noted retail is going through a tough time between e-commerce and covid, with mall space the segment most affected. This site was formerly a Ward's and then a Value City Furniture, which performed so poorly they had to close. The opportunity now is for a Fortune 500 company which does over \$10,000,000 in sales annually.

Chairperson Sikora asked if Board members had questions for the applicant.

Ms. Smith commented the applicant cannot say their second proposal for truck ingress-egress would keep trucks from crossing the 4-way stop.

Mr. Ventimiglia said they may exit at the 4-way stop but would not block it when loading and unloading.

Ms. Smith felt trucks in the 4-way stop would still be a hindrance to other vehicles and pedestrians.

Mr. Ventimiglia said the plan displays truck turns which offer plenty of space to adjust within the dock area itself. He does not think the trucks will be a hindrance to traffic and said stop signs at the crosswalk will be provided to protect pedestrians. Trucks may pull into the stop.

Hearing no further questions, the Chair moved the meeting to Public Hearing.

Ms. Cathy Schultz, Metro Transit Planning and Development Manager, indicated the plans provided have been reviewed extensively and there are concerns about relocating the bus stop. She provided the hours the buses run and noted the Maple Hill stop experiences high usage, and is the 5th busiest of the 750 stops in Kalamazoo County. It is not unusual for three buses at one time to be at the Maple Hill stop.

They have been trying to figure out a site that would not interfere with the mall and safety. Also ADA access is a concern. There needs to be adequate space for wheelchairs and other equipment to be able to pass one another, which would not occur if a sidewalk lip is in the same location.

She noted getting in and out of Maple Hill at Drake and W Main is difficult and making a left turn is almost impossible, especially during peak times. Three proposals have been made from SHOPOne and she has talked with Mr. Ventimiglia about them. She is not sure what it will look like if the stop needs to be moved. They will continue to work through the process, but she would like to keep a key location for service.

Mr. Ventimiglia said he is working in earnest with Ms. Schultz and the team on bus stop relocation. If it is relocated, pedestrian traffic crossing at the loading dock would be minimal. He expects mostly storage type retailers will look at the back area.

Ms. Lubbert said she did not see the pedestrian signage mentioned by Mr. Ventimiglia on the plan. If the variance is approved, it should include a condition to require installed safety measures.

Mr. Ventimiglia agreed; Ms. Miller will draft that and submit it to Township staff.

Mr. Hutson noted for the record that Dunham's loading dock existed prior to the installation of the secondary traffic way that Mr. Ventimiglia referred to.

Hearing no further public comment, Chairperson Sikora moved to Deliberations.

Ms. Maxwell felt it would be helpful to know more from Metro Transit.

Ms. Farmer stated that based on what Ms. Schultz said, none of the three proposals are sufficient to accommodate buses. If there is no plan set ahead of time, a plan would have to be created. It cannot be expected the schedule would completely change "just in case."

Ms. Maxwell said without that piece she was not sure she could vote yes.

Attorney Porter instructed Board Members they needed to make their decision based on the findings of fact that currently exist.

Mr. Gould asked how many deliveries would normally be expected for a store of the size planned, whether they would be 7 days a week and how busy the corner would likely be. He was concerned that the greater frequency of occurrence would more likely be a problem for pedestrian safety. He noted that during the winter the parking lot has a much smaller footprint once there is snow.

Mr. Sikora wondered how you could predict sales and shoppers to determine that impact. He said he was concerned about accepting limited deviation to the stated plan. He would prefer to eliminate conflict in order to not have a need for enforcement. Health and safety are overwhelming on the list of criteria.

The Chair confirmed with Attorney Porter that the first motion to be considered should be request for variance. If that did not pass, it would not be necessary to consider the site plan. He asked for a motion to consider the variance request.

Ms. Farmer made a motion to deny the request for variance based on three findings of fact: 1) the need for the variance is a self-created hardship, 2) conformance with the code is not unnecessarily burdensome as reasonable use of the space will remain if denied, and 3) approval would create a safety issue for both vehicular and pedestrian movement throughout the site.

Ms. Maxwell seconded the motion. The motion to deny the request for variance was approved unanimously by roll call vote.

Public Comment

There were no comments from the public.

Other Updates and Business

Ms. Lubbert said there may be a site plan or two requiring a meeting in February.

Mr. Gould thanked staff for a printout of the Board Meeting packet and requested that one be provided for future meetings. Ms. Maxwell requested the same.

Chairperson Sikora thanked Ms. Lubbert and Attorney Porter for the variance review and retraining preparation and presentation.

Attorney Porter said he felt providing regular training was a good idea.

Adjournment

Chairperson Sikora noted the Zoning Board of Appeals had exhausted its Agenda. There being no other business, he adjourned the meeting at approximately 4:56 p.m.

Minutes prepared:
January 30, 2021

Minutes approved:
February 23, 2021