

SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

July 15, 2004

The Saugatuck Township Zoning Board of Appeals met on July 15, 2004, at the township hall on Blue Star Highway, Saugatuck, Michigan 49453.

Present: Oyler, Marzuk and Wester

Absent: None

Also present: Z. A Ellingson, Atty Bultje, Kathy Beery, Thom Carpenter, Matt Wickstra and Atty Joel Bouwens for the Commercial Retail Plaza, and Dayle Harrison.

Chairman Oyler called the meeting to order at 4:00 P.M. Two hearings were scheduled: (1) for Kathy Beery on a garage in A-2 violating setback Sec. 40-187; and (2) an appeal of the Planning Commission's denial of SAU in C-2 for the Commercial Retail Plaza planned for the property next door to the township hall.

Oyler introduced the first hearing on a request for variance by Kathy Beery, 2958 66th St., Douglas, to build a 24X24' garage 30 feet from the road ROW, contrary to the setback required by Sec. 40-187. A ravine lies behind where she wishes to build her garage. Beery presented a drawing of the site and explained that she wanted the garage for storage and did not feel financially able to reinforce the banks of the ravine in order to go back farther. She said she had just under an acre of property, and her dance studio and a shed occupied part of it. Ellingsen said the stakes revealed that the garage would sit on an angle, and the north corner would encroach upon the setback requirement. There had been no letters or calls on this variance request. Wester asked to go through the application form, and Oyler said he thought it was thereby determined that there were exceptional circumstances because of the ravine, that others in the area would be able to conform to the setback if they did not have a ravine, that authorizing the variance did not jeopardize other property owners, and that the condition of the property or its use is not of such recurrent nature as to warrant a rezoning of the area. Wester said he thought the property owner should substantiate the need for this building, and he did not think there was an extenuating circumstance.

Oyler made a motion to approve Beery's application for a variance from Sec. 40-187, and Marzuk seconded. Oyler said he thought this was a unique situation, not created by the applicant. The vote was 2 to 1, with Wester voting NO. Motion carried.

Oyler then introduced the appeal of a decision by the Planning Commission to deny SAU for the Commercial Retail Plaza planned for the property to the north of the township hall, in accordance with Sec. 40-72(1). Oyler read the notice published in the newspaper, and Ellingsen verified that notices were sent to property owners within 300 feet of the subject property. Ellingsen gave a brief history of the property owned by Dimitrios Economides of East Lansing, who originally obtained a SAU for a commercial plaza in 1998 and got extensions for two years. When Bauer presented a plan showing most of the parking in the front of the plaza, Ellingsen said he advised seeking a variance from the required 20% parking in front. That variance was approved by the ZBA. Then the Planning Commission reviewed different plans at two different meetings, and the SAU was denied on the basis of the plan dated 4/26/04, showing 67% of parking in front. Wester observed that the ZBA gave its variance based on a different site plan that showed two buildings and did not have a second entrance off Clearbrook Drive. He thought the ZBA could not give a variance based on this plan.

Dayle Harrison said he thought the applicant should have been sent to the Planning Commission first, that parking was a site plan review issue, and that the boards should not be put in a position to "butt heads."

Atty Bouwens stated that the Planning Commission made its decision to deny SAU on the basis of Sec. 40-693 (b) (1) (2) (3). He said they did not make any findings of fact with those criteria, but rather found that the parking was mostly in front and a Dollar Store was perhaps too "common" to be in an area like this. Bouwens quoted the "Statement of Purpose" for the C-2 local commercial area from Sec. 40-416 and the "Permitted Uses" and "Special Approval Uses" from 40-417 and 40-418 of the Zoning Ordinance. He maintained that this type of retail plaza fit these criteria and was consistent with the area. He also said the proposed building is of the same scale as neighboring ones, and parking is mostly in front in this area.

Atty Bultje, upon being consulted by Oyler, stated that he thought the procedure that was followed was the correct one, in that the Planning Commission should not be confronted with a proposed plan that immediately does not fit the Ordinance, such as violation of the parking requirements. Going to the ZBA first was the right thing to do. Bultje said he also thought the fact that this site plan is different from the one presented for the variance did not have a nullifying effect. He said the ZBA now sits as the Planning Commission, applying the standards in Sec. 40-693, to decide on SAU. He was asked if the Planning Commission could have appealed the ZBA decision to grant variance for parking, and he said, "No, but the township board could have, on the basis of being a neighbor to the proposed project. However, that didn't happen." This does go back to the Planning Commission for site plan review under Sec. 40-816.

Atty Bultje verified for the record that Dan Marzuk, the new ZBA board member attending for the first time, is the representative from the Planning Commission, but he was not a member of the Planning Commission at the time this proposed plan was considered. Therefore, there is no conflict of interest on his part.

Dayle Harrison said a court would look at whether or not the Planning Commission abused their discretion in making the decision to deny SAU, and he did not think there was a complete record of whether there was a reasonable basis for that decision. Bultje said the circuit court would look at whether the Planning Commission used discretion in applying the standards of Sec. 40-693, and the minutes of the Planning Commission meeting is the official record. Bouwens restated that he thought the decision was not based on facts, only on the "feeling" that the plan did not fit the standards of Sec. 40-693.

Wester said he thought there were safety issues with this 4/26/04 plan. Bultje said the ZBA could place conditions on the SAU approval.

Oyler led the board through the four standards in Sec. 40-693 (b): (1) The intended use is a strip mall under 30,000 sf with tenants that fit the permitted uses in C-2. Wester said it needs a green belt on Blue Star and buffer for residents to the rear; lights should not shine into homes nearby. He questioned how deliveries would be made with parking on both sides. Wickstra said the deliveries would not be large. Oyler thought this was the kind of use intended in this district. (2) This use does not change the essential character of the area. (3) This use should not be hazardous to adjacent property nor detrimental to persons. Lighting issues and possible traffic control to Clearbrook Drive on the southeast corner of the property were mentioned. (4) This use should not place undue demands on public services. Public water and sewer are available. Storm water would be managed on site, but borings have not as yet been done, according to Carpenter.

Bultje said the applicant had the option to reduce the 67% parking in front on this plan, but the ZBA could place a condition to limit the parking to no more than 67% in front as shown on the 4/26/04 plan.

Oyler asked Atty Bultje to suggest a motion. Bultje offered the following motion: That the appeal of the applicant is granted. The SAU denial by the Planning Commission is reversed, and the SAU is granted on the basis of the 4/26/04 plan, allowing the applicant to have up to 67% of the parking in the front yard. This holding is based on the standards of Sec. 40-693 (b) (1) that the Special Approval Use shall be designed,

constructed, operated, and maintained in a manner harmonious with the character of adjacent property and the surrounding area; (2) that the Special Approval Use shall not change the essential character of the surrounding area; (3) that the Special Approval Use shall not be hazardous to adjacent property or involve uses, activities, materials or equipment which will be detrimental to the health, safety, or welfare of the persons or property by traffic, parking requirements, noise, vibration, smoke fumes or glare; (4) that the Special approval Use shall not place demands on public services and facilities in excess of capacity. The conditions placed on the approval of this appeal will be that the applicant must comply with the Zoning Ordinance, but for the variance that was granted; must comply with all other township ordinances and all other laws and regulations; must go back to the Planning Commission for site plan review under the Zoning Ordinance; shall install downward-directed, shielded lighting, directed away from the residential neighborhood in the vicinity; and shall install traffic controls on the internal road on the southeast corner of the site. Oyler adopted this language as his motion. Marzuk seconded. The motion carried unanimously.

Harrison had issues with the procedures and wanted the ZBA to review them.

Meeting adjourned at 5:40 P.M.

Betty A. White, Recording Secretary