

1 **KALAMAZOO CHARTER TOWNSHIP ZONING BOARD OF APPEALS**

2
3 **MINUTES OF MEETING HELD JANUARY 18, 2017**

4
5 A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was
6 held on January 18, 2017, at the Kalamazoo Township Hall commencing at 7:00 p.m.
7

8 Members Present: Steve Leuty
9 Fred Nagler
10 Jim Short, Chairman
11 Bob VanderKlok
12 Ann Simmons
13

14 Members Absent: None
15

16 Also present were Patrick Hudson, the Township Planner; Roxanne Seeber Township
17 Attorney; and 4 other interested persons.
18

19 **ITEM 1 CALL TO ORDER**

20
21 Chairman Short called the meeting to order at 7:00 p.m.
22

23 **ITEM 2 ROLL CALL**

24
25 Chairman Short called the roll.
26

27 **ITEM 3 APPROVAL OF AGENDA FOR JANUARY 18, 2017 MEETING**

28
29 Chairman Short indicated that the next item was the approval of the meeting
30 agenda. Motion was made by Simmons, seconded by Nagler to accept the agenda as
31 presented. The motion passed unanimously.
32

33 **ITEM 4 APPROVAL OF MEETING MINUTES FOR OCTOBER 19, 2016**

34
35 Chairman Short asked for the Board’s review of the minutes of October 19, 2016.
36 Motion was made by Nagler, and seconded by VanderKlok to approve the minutes of the
37 October 19, 2016 meeting as presented. The motion passed unanimously.
38

39 **ITEM 5 PUBLIC HEARINGS**

40
41 5a. 1108 Dupont. The next item on the agenda was a public hearing on the
42 request of Roger Brown to convert a lawful nonconforming use at 1108 Dupont Avenue
43 in order to allow the placement/storage of a semi-truck tractor without trailer inside of
44 the pole building located thereon. The property is located in the C-1 “Local Commercial”
45 district zoning classification. The Zoning Board of Appeals had approved an auto and
46 truck repair business and site plan for the property in March 1988. Hudson had
47 previously provided his letters of violation sent to the property owner and his letter

1 indicating that the auto and truck repair facility is a lawful non-conforming use. He
2 wished the ZBA to determine whether the use was a “change in ownership/tenancy” and
3 thereby allowed under Section 3.03 G (nonconforming uses) of the ordinance; or if it
4 was a “substitution” of a non-conforming use which could be approved by the ZBA if it
5 was deemed to have a lesser degree of non-conformity and if the substitution was
6 approved by the ZBA. Finally, he wished the ZBA to determine to what extent the site
7 plan parameters approved on March 3, 1988 by the ZBA applied to the use, if it was
8 approved.
9

10 Roger Brown indicated that he had talked to those in the neighborhood and that
11 he had received no objections to the proposal. Mrs. Brown indicated that her father had
12 a similar situation on the property in the past. Short inquired as to whether the former
13 use was a repair business and whether it continued. Brown indicated that the repair
14 business was no longer there, but the building was still on the property and it was
15 owned by his wife’s mother, the widow of the former owner. The property had been idle
16 for a number of years, Brown said. His wife’s mother had stored furniture in the
17 building and a nephew had used it to store his boat in for a while. Brown indicated that
18 nothing commercial was occurring on the property.
19

20 Brown introduced his tenant, Dustin Huffman who is occupying the property at
21 the present time. Huffman’s request was to park a semi-truck trailer in the pole barn.
22 Huffman indicated that he had agreed to rent the building. He owns a transport
23 company. The truck in question is used to haul no more than 18,000 pounds. Mostly,
24 he said, they haul vehicles and equipment on flat bed trailers. Huffman indicated that
25 there would be no repairs occurring in the building, except on the truck in question and
26 when they need to do summer maintenance. Huffman indicated that he had done a lot
27 of work clearing the property, which had cost him more than \$10,000. He removed the
28 graffiti from the building and removed the accumulation of trash and cast-offs.
29

30 In response to an inquiry from Short, Huffman indicated that he intended to park
31 a dually truck on the outside of the property; and an F-150 pick-up truck. Short
32 inquired where the trailers were parked. Huffman indicated that they are parked on the
33 new Peterbuilt property on Sprinkle Road and the business loop. He also stores them at
34 Rick’s trailer shop, which has room to park the trailers outside. Huffman stated that his
35 original intention was to park the trailers outside of the building on the property in
36 question; however, he had found out that two of the parcels are zoned residential.
37 Therefore, someone at the township had stopped him from doing anything more on the
38 property. He had not spoken with Brown prior to the meeting about it, but he did have
39 an intention to park the trailers outdoors on the property. They were not typical
40 semi-truck trailers, he said. They were flat bed cargo trailers. He wished to fence the
41 property in after the trailers were allowed outdoors. He thought that all four lots were
42 zoned commercial. He was hoping to build a second driveway off of Fields in order to
43 allow ingress/egress in a circular fashion. Huffman thought that the two residential lots
44 needed to be rezoned before he could store the trailers out there. He was curious as to
45 why every road in the area was paved during the summer of 2016 except Dupont. A
46 person at the township had told him that he would have to pay for the road
47 improvement if he made use of the property in a commercial fashion.

1 Leuty inquired about driveways. Huffman indicated that they had removed the
2 steel posts that had previously outlined the driveways. Going forward, he said, the plan
3 is to fence all of it in, so that everything is contained. He had spoken with an adjoining
4 property owner, who was also selling his lot. He may want to acquire that as well, he
5 said. In response to a further inquiry from Leuty, Huffman indicated that the opening
6 is on the east side of the property at the present time. He is staying off of the
7 residentially-zoned lots. He had put a 40-foot long driveway cable across the driveway.
8 Mrs. Brown indicated that there are other semi-trucks and trailers using Dupont.
9 Huffman indicated that her parents had been paying for commercial taxes all these
10 years. He did not see why they should have to pay for road improvements as well. The
11 biggest weight problem, Huffman indicated, is the city garbage trucks.
12

13 VanderKlok introduced an email from the Kalamazoo County Road Commission
14 indicating that they typically do not recommend commercial driveways be located
15 within residential uses. Past the property in question on Dupont are all residential
16 neighborhoods, he said. Additionally, the driveway would have to be constructed to
17 road commission standards. They would need a 50-foot hard surfaced concrete or
18 asphalt driveway. Commercial developments are restricted to one driveway unless a
19 developer can justify the need for another driveway. Dupont is only twenty feet wide. It
20 is only constructed to handle typical residential traffic. VanderKlok stated that there is a
21 good possibility that the road commission would require a developer to rebuild Dupont
22 to meet current road specifications. It has to be both bigger and wider, he said. Mrs.
23 Brown inquired as to whether these conditions apply to everyone on the block.
24 VanderKlok indicated that he had not inquired about other properties on the street.
25 Huffman noted that a semi-company has three steel hauling trailers out there that loop
26 the block. Huffman indicated that all they want to do is park on the property. The use is
27 nowhere near as intensive as that company, he said.
28

29 VanderKlok indicated that the original approval did not allow for overnight
30 parking and the building was only to be used for repairs. Additionally, the property was
31 to contain its own water as specified in the prior approval. This was not presently being
32 done. VanderKlok stated that dry wells or swales may be necessary to ensure that all
33 run-off is contained on the property. There were no signs that the water was being
34 contained on the property. There are no eaves troughs on the building, he said. On the
35 north side of the building, VanderKlok stated, all of the water is running down onto
36 Carlton. VanderKlok cautioned that it is a pretty expensive undertaking with all of these
37 things that are going to be required.
38

39 Huffman stated that the water comes from nature. How was he supposed to
40 control nature, he inquired. He noted that the bathroom is hooked into city sewer.
41 Short indicated that Lakewood is located in a flood zone. Huffman indicated that the
42 entire property is already built up by 3 feet. VanderKlok was concerned that adding 50
43 feet of concrete would then force 50 more feet of water onto the land. VanderKlok
44 suggested that grills on the lower part of the skirting, and piping to dry wells would be
45 necessary. Brown indicated that the water would have to be pumped uphill.
46

1 Huffman inquired as to what the township wants to be on the property. Does it
2 want residences, he inquired. He was concerned about the cost of containing the water
3 that runs off of the roof.
4

5 Short noted that the property had been approved and was nonconforming in the
6 past. He felt that parking a single semi-truck tractor in the building on the property was
7 acceptable, as a lesser use than the prior repair business. He reasoned that it isn't really
8 doing anything different except extending the nonconforming use. VanderKlok
9 indicated that if we accept the non-conforming use, the occupants would still have to
10 abide by the original site plan. That meant no trailers and no overnight parking, he said.
11 He additionally suggested that the fire marshal should be required to inspect the
12 building. Air exchangers and exhaust protection were probably going to be required, he
13 said.
14

15 Huffman inquired again as to the lawful use of the building. VanderKlok noted
16 that there were a number of uses outlined in the zoning district. Mrs. Brown indicated
17 that most of those uses were impossible. No one wanted to put a funeral parlor there,
18 she said. VanderKlok reiterated that the water must be contained on the property.
19 There are a lot of other uses permitted in the zoning district. Huffman inquired as to
20 how that would happen. Do they have to dig holes, he inquired. The raised nature of
21 the property should be sufficient, he said, because the extra fill would absorb it.
22 VanderKlok's objection was that when the property floods, it floods the neighbors.
23

24 Hudson indicated that the flood plain level was for a 100-year flood. The
25 township required water containment for a 25-year rain event. He stated that most of
26 the businesses that we have approved along West Main Street have required dry wells
27 because of the water table. Hudson indicated that they are looking at an increase of
28 impermeable surface with the addition of the driveway and parking area. An engineer
29 could produce the calculations, he said. He considered that a shallow berm may be
30 sufficient, but that it would be up to the engineer to determine the containment
31 measures that were necessary. Short recalled that that they had allowed for crushed
32 rock instead of asphalt or concrete, he said. Hudson indicated that crushed rock would
33 be more permeable and would be permitted. Hudson considered whether he could
34 allow parking administratively. Upon making the calculations, he felt that
35 administrative review was possible. He requested a site plan prepared by a professional
36 engineer.
37

38 VanderKlok voiced concern that the property was levelled within the last two
39 months, making the situation worse. Huffman objected, indicating that he had not
40 removed any dirt during the levelling, with the exception of a mound and the removal of
41 a tree. The giant slant to Dupont, he said, was always there. Huffman indicated that his
42 son had left his trailer there for a couple of days. He had told his son to remove the
43 trailer. VanderKlok indicated that he lives in the area and he had seen a lot of stuff
44 going off of the property.
45

46 Leuty considered the March 1988 minutes and inquired as to whether the
47 addition of a driveway was an increase in the level of nonconformity. Further, he said,

1 there was no overnight parking permitted in 1988. Thus, he said, the proposed trailer
2 parking would be viewed as an increase in the degree of nonconformity.
3

4 Short opened a public hearing on the request. Ophelia Nieves has lived across
5 Dupont from the property in question for the past 30 years. She recounted two
6 enormous floods and several small ones. She does not have a problem with the
7 proposed use or the people using the property. She wished to ensure that the water was
8 contained on the property itself. All of the water flows off of their property and in the
9 direction of hers. The property in question is higher than Lake Street, she said. Grass
10 or other drainage control measures would be necessary, she said.
11

12 Huffman stated that he drives into a river on Lake Street whenever it is raining.
13 All of the roads taper into one particular area. It comes off the roofs and the roads and it
14 has nowhere to go. He did not know about containing the roof water. It might be a deal
15 breaker, he thought.
16

17 Nagler explained the differing jurisdictions of the county road commission and
18 the township. He considered the March 1988 approval and indicated that there was no
19 consideration for outside parking. If trailer parking was part of the request, he felt that
20 it would be considered an increase in the nonconformity. He allowed that the inside
21 parking of the semi-truck tractor would be a continuation of the prior use or a lesser
22 degree of nonconforming use. Some of the other issues would need to be considered
23 with the site plan, he said. Short agreed with Nagler. He indicated that parking inside
24 the building was okay, but that the outside trailer storage may be an issue.
25

26 Simmons indicated that the question was whether to allow the tractor to park
27 inside of the building as a continuation of the prior use. VanderKlok indicated that he
28 would not agree to any outside parking. Further, he said, the water would have to be
29 contained onsite. VanderKlok inquired as to why the water was not taken care of in
30 1988. Mrs. Brown indicated that her father had been dead for many years. She had no
31 idea why the water was not addressed. The poor people at the end of the street have
32 been taking the water run-off from this property for thirty years VanderKlok
33 commented. Further, he felt that there was no respect for the prior approval conditions.
34

35 Nagler inquired as to whether the site had been filled as part of the prior project.
36 VanderKlok indicated that the fill had pre-dated the prior approval. It had been there as
37 long as he could remember. Nagler indicated that the parking in the building was not
38 really a continuation of a lawful nonconforming use. Seeber read Section 3.03 A of the
39 ordinance into the record. She confirmed with the applicant that their only request was
40 to park the semi-truck tractor inside of the building. The trailer parking, etc. was not
41 part of the current request. Brown and Huffman confirmed this.
42

43 Huffman indicated that the prior approval was for “no vehicles outside”. A trailer
44 was not a vehicle, he reasoned. Nagler indicated that there was to be no outdoor
45 storage. Huffman indicated that it doesn’t say there can be no parking outside. He was
46 not intending to have customers on the property, he said. He felt that the use was a
47 lesser one to that of the prior approval. There would have been a stream of vehicles

1 coming through the building when it was used as a repair shop.
2

3 Leuty considered the old minutes, indicating that they did not specify the type of
4 trucks that were eligible for repair. He inquired about the nonconformity. VanderKlok
5 indicated that a nonconforming use that was discontinued for more than a year would
6 be forfeited, according to the zoning ordinance. Leuty was unsure that the
7 nonconformity was still in effect. Simmons inquired as to whether the zoning district
8 had changed. Hudson stated that the 1988 approval was for a nonconforming use in
9 the same district. He indicated that part of a forfeiture of nonconforming use was an
10 “intent to discontinue”. He stated that he would consider whether there was electrical at
11 the building and if it had been used over the years. Mrs. Brown indicated that they had
12 never discontinued the electricity.
13

14 Short indicated that there is an existing pole barn and they want to park a truck
15 tractor in it. Hudson noted he did not see an intent to abandon the lawful
16 nonconforming use. Leuty indicated that the pole barn is not being used for a car or
17 truck repair. Simmons stated that parking a truck inside the building was a lesser use.
18 VanderKlok read section 3.03 C “Discontinuation of lawful nonconforming uses” into
19 the record. Seeber indicated that intensity of the proposed use verses the prior
20 nonconforming use could also be considered.
21

22 VanderKlok stated that he was terribly worried about the drainage. He inquired
23 as to how long it might take to get the water situation addressed. Mrs. Brown estimated
24 six months. She indicated that she would need to hire an expert and find out how much
25 money it would take. VanderKlok indicated that if the applicants would not address the
26 drainage, then he was not inclined to approve the request. It was imperative that they
27 retain the water on the property itself, he said.
28

29 Leuty inquired about the years of sitting idle and using the building for furniture
30 storage and boat storage. He indicated that the building was then no longer an
31 automotive repair facility. He was concerned that the township was in jeopardy of not
32 following its own ordinance. He indicated that the use may have been a “neutral” for
33 several years. Hudson explained his determination on the “intent to abandon” standard.
34 Leuty stated that the semi-truck tractor storage was a lessening of the nonconformity.
35 Brown indicated that he had been desperately searching for a buyer. He provided a copy
36 of a petition in favor of the application, which he indicated was signed by a number of
37 his neighbors.
38

39 VanderKlok stated that no matter what happens at the hearing, the on-site
40 drainage needed to be addressed. Huffman stated that it sounded like they had been
41 sending battery acid into the street for thirty years, the way they were carrying on. It
42 was just water, he said. The only water on the property, he said, was on the cement slab.
43 Otherwise, it absorbs into the ground.
44

45 VanderKlok indicated that the fire marshal should be required to inspect the
46 building for the truck storage, if it was approved.
47

1 Short moved that the parking of a semi-truck tractor in the existing building on
2 the property was found to be a lessening of the degree of nonconformity when compared
3 to the prior use as an automobile and truck repair business and that such activity could
4 take place conditioned upon the following:

- 5 • Adhere to the conditions of approval from March 1988.
- 6 • Obtain a sealed drainage plan prepared by a professional engineer,
7 architect or surveyor; and adhere to the conditions required to contain all
8 run-off and surface water on-site. The Township Zoning Administrator
9 shall ensure that this condition is adhered to within 6 months.
- 10 • The fire marshal shall inspect the building for suitability for semi-truck
11 trailer storage. The applicants shall adhere to any conditions placed by the
12 fire marshal and the fire code.
- 13 • The lights on the property shall be shielded within 60 days.
- 14 • No overnight outdoor parking for trucks, vehicles or trailers.
- 15 • The hours of operation from 1988 are continued, being from 7:00 a.m. to
16 7:00 p.m.

17 Simmons seconded the motion and it passed unanimously.

18
19 Huffman indicated that he had pushed all of the snow to the center of the
20 property in an attempt to contain the snow melt.

21
22 **ITEM 6 OLD BUSINESS**

23
24 6a. None.

25
26 **ITEM 7 NEW BUSINESS**

27
28 7a. Election of Officers.

29
30 The next item on the agenda was the election of officers. VanderKlok moved,
31 supported by Nagler to retain the current slate of officers. The motion passed
32 unanimously. Officers are Short – Chairman; VanderKlok – Vice Chairman and
33 Simmons – Secretary.

34
35 7.b. 2017 ZBA meetings schedule.

36
37 Nagler moved, supported by Leuty, to approve the meeting schedule for 2017.
38 The motion carried unanimously.

39
40 **ITEM 8 OTHER MATTERS TO BE REVIEWED BY THE ZBA**

41
42 8a. Comments from the public on matters not already addressed.

43
44 None

45
46 8b. Correspondence received.

47

1 None.

2
3 8c. Zoning Board of Appeals member comments.

4
5 VanderKlok asked to have the record reflect that there is a change in commercial
6 use at 3427 Miller Road from a used car lot to a detail shop with a new sign. He asked
7 the zoning administrator to investigate this situation.

8
9 Leuty provided a report on the activities of the Township Board including:

- 10
- 11 • Waiting for state administrative rules related to medical marijuana.
 - 12 • Potential of a May 2 ballot measure to levy \$2.30 per device capable of
13 dialing 911 for Central Dispatch funding purposes. He indicated that the
14 Township Board is discussing ways to use the money that we presently
15 earmark for dispatch. He was hopeful of reviving the community policing
16 program.
 - 17 • The County Road Commission is preparing the final details on 2017
18 roadwork for the township. Bidding and sidewalk work is being worked
19 on by Prein and Newhof at the present time.
 - 20 • The Township appointed Denise Hartsough as a new member of the
21 planning commission replacing former member Bob Talbot, now
22 deceased.

23
24 Short was pleased to hear that Talbot had been honored by the Township.

25 Leuty indicated that he has now been appointed as parks commissioner and that
26 he was excited to get to work on those duties, including implementation of the
27 remainder of the parks plan.

28 VanderKlok inquired about the Pick property. Seeber provided a status report.

29
30 8d. Report of the Planning Commission member.

31
32 Nagler discussed the January 5, 2017 Planning Commission meeting, at which a
33 special use approval was granted for the Boji Group for a hotel and drive-through
34 restaurant at the former Davenport University property on West Main Street. He
35 indicated that they had been doing a lot of site plan approvals. Text amendments to the
36 C-2 district zoning classification had been approved and distributed. There were
37 additional amendments on the way, he said. The planning commission had also
38 approved the rezoning for Mr. Snow; and the site plan/change in use for the former
39 Michigan waterproofing building site on West Main. He also announced the officers of
40 the planning commission.

41
42 **ITEM 9 ADJOURNMENT**

43
44 There being no further business, Nagler made a motion to adjourn which was
45 supported by Leuty. The motion carried unanimously and the meeting was adjourned
46 at 9:15 p.m.

**KALAMAZOO TOWNSHIP
ZONING BOARD OF APPEALS**

Ann Simmons, Secretary
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**SYNOPSIS OF ACTIONS
ZONING BOARD OF APPEALS**

The Kalamazoo Charter Township Zoning Board of Appeals took the following actions at its meeting of January 18, 2017:

1. Approved the storage of a semi-truck tractor in the building at 1108 Dupont, with conditions, as a reduction in the degree of nonconformity.
2. Elected officers