

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS REGULAR MEETING MINUTES *APPROVED*
5151 MARSH ROAD, OKEMOS, MI 48864-1198
(517) 853-4000
WEDNESDAY, OCTOBER 23, 2019 6:30 PM
TOWN HALL ROOM**

PRESENT: Chair Beauchine, Members Mansour, Field-Foster, Wisinski, Lane
ABSENT: None
STAFF: Director of Community Planning and Development Mark Kieselbach, Assistant
Planner Justin Quagliata, Principal Planner Peter Menser
OTHER: Township Attorney Matthew Kuschel

1. CALL MEETING TO ORDER

Chair Beauchine called the meeting to order at 6:30 p.m.

2. APPROVAL OF AGENDA

MEMBER FIELD-FOSTER MOVED TO AMEND THE AGENDA TO ADD 6.B.1. TO HAVE A CLOSED SESSION TO DISCUSS A CONFIDENTIAL LEGAL OPINION.

SECONDED BY MEMBER MANSOUR.

VOICE VOTE: Motion carried unanimously.

MEMBER WISINSKI MOVED TO APPROVE THE AGENDA AS AMENDED.

SECONDED BY MEMBER LANE.

VOICE VOTE: Motion carried unanimously.

3. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES

Wednesday, October 9, 2019

MEMBER MANSOUR MOVED TO APPROVE THE MINUTES FROM WEDNESDAY, OCTOBER 9, 2019.

SECONDED BY MEMBER WISINSKI.

VOICE VOTE: Motion carried unanimously.

4. COMMUNICATIONS

None.

5. UNFINISHED BUSINESS

None.

6. NEW BUSINESS

- A. ZBA CASE NO. 19-10-23-2 (Okemos Retail Management), 30200 Telegraph Road Suite 205, Bingham Farms, MI, 48025**

DESCRIPTION: 2085 Grand River Avenue
TAX PARCEL: 21-276-011
ZONING DISTRICT: C-2 (Commercial)

The applicant is requesting a variance from the following section of the Code of Ordinances:

- Section 86-402(17), Maximum impervious coverage. The maximum percentage of impervious surface permitted on a site shall be 70 percent. Impervious surfaces shall include all land covered with paving and buildings. The impervious surface shall be calculated by dividing the total impervious surface by the gross area of the site.

The variance request is to exceed 70 percent impervious surface coverage at 2085 Grand River Avenue.

Assistant Planner Quagliata outlined the case for discussion.

Chair Beauchine asked the applicant or the applicant's representative if they would like to address the Zoning Board of Appeals (ZBA).

Mr. Kevin Kalmbach, 2116 Haslett Road, Haslett, KEBS, Inc., the applicant's representative, stated in a 100 year storm event the 100 year floodplain would be next to the building. The detention area also would be covered by the floodplain. He added the storm calculation was based on a requirement of the Ingham County Drain Commissioner for pre-treatment of the stormwater. He noted the detention area would be green most of the time and stated if the entire detention area and the area of permeable pavers were included in the pervious surface calculation, the impervious surface coverage would be approximately 70 percent. The permeable pavers were not included because they could not be used for pervious surface coverage.

Chair Beauchine opened the floor for public remarks and seeing none closed public remarks.

Chair Beauchine asked staff if the remaining portion of the detention area could be counted as permeable.

Assistant Planner Quagliata responded only 50 percent could be counted.

Chair Beauchine asked staff the square footage of the permeable pavers that were initially proposed.

Assistant Planner Quagliata responded the pavers were approximately 200 square feet.

Member Wisinski requested staff to clarify the difference between pervious and impervious for a detention area.

Assistant Planner Quagliata stated the detention area design was based on the storm event and only 50 percent of the detention above the designed storm level could be counted.

Member Mansour asked staff if there was a detention area currently on the site.

Assistant Planner Quagliata stated the existing site did not contain a detention area.

Member Mansour asked staff for a comparison of the existing impervious surface coverage on the site and proposed coverage if the variance was approved.

Assistant Planner Quagliata stated impervious surfaces include all land covered with paving and buildings. He noted the property currently contained 76 percent impervious surface. The proposed development would contain 73.98 percent impervious surface coverage, a decrease of 2.07 percent.

Member Lane asked the applicant's representative how it would present a practical difficulty for the project if the variance was not granted.

Mr. Kalmbach responded the proposed design provided access around the entire building which was safer and more usable for customers. Without the variance the building would have limited uses as a two-way drive on the east side of the building would not be possible.

Member Lane suggested a smaller building be constructed.

Mr. Kalmbach responded a smaller building would reduce the usefulness of the building and the income potential.

Member Lane stated the location of the property, the stormwater requirements and the floodplain created unique circumstances which were not self-created so review criteria one and review criteria two (Section 86-221) had been met. He expressed uncertainty regarding whether review criteria three and four were met as additional engineering could have been done to utilize the property without requiring a variance.

Chair Beauchine stated the proposed impervious surface coverage was closer to what the ordinance required and a condition could be placed on the variance to require permeable pavers.

Member Field-Foster stated even if the site was redesigned a variance would still be needed which created a practical difficulty.

Chair Beauchine read review criteria two which states these special circumstances are not self-created. He stated the special circumstances were not self-created.

Chair Beauchine read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. He stated the redevelopment was an improvement to the property.

Chair Beauchine read review criteria seven which states the conditions pertaining to the land or structure are not so general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. Chair Beauchine read review criteria five which states granting the variance is the minimum action that will make possible the use of land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance, secure public safety, and provide substantial justice.

Chair Beauchine stated the variance request met both review criteria seven and review criteria five.

Chair Beauchine read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. He stated the intent was that over time all buildings will conform with the zoning. Review criteria three had been met.

Chair Beauchine read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose.

Member Lane stated regarding review criteria four a special use permit had been granted by the Planning Commission for the drive-through and without the variance it would be difficult to use the property and have a drive-through.

Member Mansour stated the project took into consideration public safety and used existing driveways. She added the variance was the minimum action necessary.

MEMBER MANSOUR MOVED TO APPROVE THE VARIANCE REQUEST FROM SECTION 86-402(17) OF THE CODE OF ORDINANCES.

SECONDED BY MEMBER FIELD-FOSTER.

ROLE CALL TO VOTE: YES: Members Mansour, Field-Foster, Chair Beauchine, Members Wisinski,
Lane
NO:
Motion carried unanimously.

B.1. CLOSED SESSION

Chair Beauchine called for a motion to go into closed session.

MEMBER LANE MOVED TO GO INTO CLOSED SESSION TO DISCUSS A CONFIDENTIAL LEGAL OPINION PURSUANT TO SECTION 8.H. OF THE OPEN MEETINGS ACT RELATING TO THE ROSEMARY MANAGEMENT APPEAL.

SECONDED BY MEMBER WISINSKI.

ROLE CALL TO VOTE: YES: Members Lane, Wisinski, Chair Beauchine, Members Mansour, Field-Foster
NO:
Motion carried unanimously.

ZBA went into closed session at 7:00 p.m.

MEMBER LANE MOVED TO RETURN FROM THE CLOSED SESSION AND RETURN TO OPEN SESSION.

SECONDED BY MEMBER FIELD-FOSTER.

ROLE CALL TO VOTE: YES: Members Lane, Field-Foster, Mansour, Chair Beauchine, Member Wisinski
NO:
Motion carried unanimously.

ZBA returned to open session at 7:30 p.m.

B. ZBA CASE NO. 19-10-23-1 (Rosemary Management, LLC), 5815 S. Pennsylvania Avenue, Lansing, MI, 48911

DESCRIPTION: Dawn Avenue
 TAX PARCEL: N/A
 ZONING DISTRICT: C-2 (Commercial), I (Industrial), and RC (Multiple Family)

- Section 86-187. Except for decisions regarding special use permits and planned unit development decisions, an aggrieved person, officer, department, board, or bureau of state government may appeal any administrative order or decision of the Director of Community Planning and Development or administrative official charged with enforcement of the zoning ordinance to the Zoning Board of Appeals.

Request to appeal a determination of the Director of Community Planning and Development that Commercial Medical Marihuana Facilities Overlay Area 4 is a second tier within Commercial Medical Marihuana Facilities Overlay Area 3, and that all types of commercial medical marihuana facilities allowed in Overlay 3 are also allowed in Overlay Area 4.

Mr. Matthew Kuschel, Township counsel, Fahey, Schultz, Burzych, Rhodes, PLC, 4151 Okemos Road, Okemos, outlined the case for discussion.

Chair Beauchine asked the appellant or the appellant’s representative if they would like to address the Zoning Board of Appeals (ZBA).

Mr. Micah Siegal, 6234 Pine Hollow, East Lansing, counsel for the appellant, Rosemary Management, stated his client had an applicant in Overlay Area 3. Including Overlay Area 4 would make it statistically less likely his client’s application would be picked in the lottery. The decision by the Director was based on the perceived intent of the Township Board. The Township Board had made statements during their deliberations leading the Director to believe Overlay Area 4 was considered an overlay of an overlay. The ZBA should consider what is in Chapter 86 of the ordinance. If the Director, appellant or ZBA does not like the way the ordinance is drafted or believe it is wrong, the remedy is for the Township Board to amend the ordinance. He requested the Director’s decision be set aside.

Member Field-Foster asked Mr. Siegal if Rosemary Management had been denied.

Mr. Siegal stated no one had been denied.

Member Field-Foster asked Mr. Siegal if Rosemary Management had been harmed.

Mr. Siegal responded the harm had not yet occurred but Rosemary Management also had an interest in the faithful execution of the laws and ordinances of the Township.

Chair Beauchine asked Mr. Kuschel to address the appeal.

Mr. Kuschel stated the ordinance process for medical marihuana facilities started in mid-2018 and was finalized in May 2019. The Township staff had consistently incorporated board comments and amendments made throughout the process. The Township Board considered a police power ordinance and a zoning ordinance to implement the Medical Marihuana Facilities Licensing Act within the Township. The two ordinances permits medical marihuana facilities including provisioning centers. The Township Board referred the Overlay Map dated January 24, 2019 to the Planning Commission as part of the zoning process to adopt the overlay areas and a zoning ordinance. There were six overlay areas on the map. The Planning Commission reviewed the material sent by

the Township Board and recommended removing Overlay Areas 2 and 6 and made other amendments to the ordinance language that was sent to the Township Board. The Township Board considered the material at its May 9, 2019 meeting. Part of the minutes of the May 9 Township Board meeting moved to establish the overlay areas based on the overlay area map dated January 24, 2019. The focus should be on the language of the minutes, the motions that were made, the maps that were adopted, and the zoning ordinance finally adopted as evidence of the intent of the Township Board. The motion at issue was a motion by Trustee Opsommer to establish a second tier zoning district overlay to only allow growing facilities in all of Overlay Area 1 which is on Towner Road and Marsh Road, all of Overlay Area 5 which is on Hagadorn Road, and the Industrial zoning in Overlay Area 3 on Dawn Avenue of the adopted overlay area map dated January 24, 2019. The Township Board stayed with the January 24, 2019 map and created a second tier zoning district. A tier is a layer of something above something else. Only growing facilities and provisioning centers were added to the second tier. When the Director was determining if applications were complete under the regulatory ordinance, he reviewed the zoning ordinance and initially determined Dawn Avenue could not support a provisioning center. The Director's official interpretation however stated there would be underlying zoning, in the Industrial zoning district along Dawn Avenue, then there would be Overlay Area 3, and there would be Overlay Area 4 which is the final overlay map dated May 16, 2019 and adopted by the Township Board and renumbering Overlay Area 5 to 6. Overlay Area 3 had not changed from the January 24, 2019 map the Township Board adopted in its motion. The determination of the Director was based on the map. Overlay Area 4 is a second tier above Overlay Area 3, which are both above the Industrial zoning in that particular location, and consistent with the language utilized by the Township Board when it established the overlays and adopted the motion on May 9, 2019. The text of the zoning ordinance is also consistent with the Director's interpretation. Section 86-445(e) states which facilities are permitted in which overlay areas. Processors only in Overlay Areas 1, 4, and 6 on property zoned Industrial, provisioning centers only in Overlay Areas 1, 2, 3, 5, 6, and 7 on property with certain zoning classifications, and so on for each of the permissible medical marijuana facilities. The language in the ordinance is the best indicator of the Township Board's intent for where each facility is permitted. In the May 9, 2019 motion, the second tier zoning district was over all of Overlay Area 1 and all of Overlay Area 5, which became 6, and a portion of Overlay Area 3. Permitting growers and subsequently processors within those areas is reflected in the ordinance text. Processors are permitted in Overlay Area 1, provisioning centers are also permitted in Overlay Area 1, and growers are also permitted in Overlay Area 1. The uses are all coextensive and do not conflict with each other. It is the same intent with Overlay Area 4. The provisioning centers are still permitted in Overlay Area 3, which is underneath Overlay Area 4, which is exactly the same motion permitting growers within all of Overlay Area 1. The police power ordinance has language discussing Overlay Area 4 but it is not a zoning ordinance and is discussing how the lottery process works. The Director's determination is correct; the geographical region along Dawn Avenue has three permitted uses, the initial underlying Industrial, all of Overlay Area 3 and any specific uses within Overlay Area 4 are permitted within that geographic area. It is a second tier zoning district laying on top of Overlay Area 3 which lays on top of Industrial zoning which is how an overlay district works. The ZBA should affirm the Director's determination because it is consistent with the language of the Township Board's motion, the overlay map adopted by the Township Board and the text of the zoning ordinance and the police power ordinance.

Chair Beauchine asked the appellant or the appellant's representative if they would like a rebuttal.

Mr. Siegal agreed the ordinance as adopted is the best evidence of the Township Board's intent. The zoning ordinance states permitted locations and lists where each type of facility may be located. A provisioning center is only allowed in Overlay Areas in 1, 2, 3, 5, 6, and 7. Overlay Area 4 is separate from Overlay Area 3. He stated the maps while instructive do not carry the force of law.

Chair Beauchine opened the floor for public remarks.

Jeff Nielson, 2450 Barnsbury Road, noted the Board's intention was to make sure provisioning centers were in a highly visible area and a high traffic area not for the area on Dawn Avenue. A grow facility is not going to locate on Dawn Avenue and Grand River Avenue. The provisioning centers are going to be where best served by accessibility. In the higher traffic areas there is less likely to have problems because you have more eyes on the sight. The intention of the Board initially was to make sure the provisioning centers were in a very visible and attractive location to the public.

Chair Beauchine closed the floor for public remarks.

Member Wisinski asked Mr. Kuschel if there had been a motion to amend the boundary for Overlay Area 3.

Mr. Kuschel stated on May 9, 2019 the Township Board referenced the January 24, 2019 overlay map without any changes to any of the overlay boundaries. None of the motions made by the Township Board on May 9, 2019 amended the boundaries of the overlay districts as reflected in the overlay map.

Member Wisinski stated Overlay Area 3 boundaries had stayed the same and the second tier Overlay Area 4 was on top of Overlay Area 3 to restrict growers as opposed to restrict provisioning centers. The intent of the Township Board was to restrict growers within the Industrial zone and the entirety of Overlay Area 3 allows provisioning centers including in Overlay Area 4.

Member Field-Foster read from Section 86-445(a) of the zoning ordinance:

“The Commercial Medical Marijuana Facilities overlay district shall apply to all lots within the areas shown on Maps 1, 2, 3, 4, 5, 6 and 7 (the “Overlay Areas”). All lots included in the overlay district shall be subject to the terms and conditions imposed in this section, in addition to the terms and conditions imposed by the zoning district where such lots may be located ...”

Member Field-Foster noted Overlay Area 4 is zoned Industrial and according to the ordinance the commercial medical marijuana facilities allowed in Industrial zoning would be allowed in Overlay Area 4.

Member Lane stated all of the motions at the May 9, 2019 Township Board meeting need to be looked at together in addition to the ordinance that was introduced. Each motion is modifying or amending the ordinance that was presented to create a final product which was ultimately adopted at the May 21, 2019 meeting. The motions serve to add language to the ordinance as it was adopted.

Member Lane proposed the following as statements of fact based on the record: the Township Board is the legislative body of the Township and the one that adopts ordinances for the Township. On May 9, 2019 the Township Board adopted the medical marijuana overlay map dated January 24, 2019. At the same meeting, a motion was made by the Board which was seconded and adopted to establish a second tier zoning district to allow only growing facilities in all of Overlay Area 1, all of Overlay Area 5, and the Industrial zoning in Overlay Area 3 of the adopted overlay map which was dated January 24, 2019. With the creation of Overlay Area 4 on that overlay map the Township Board identification of former Overlay Area 5 along Hagadorn Road was renumbered to Overlay Area 6, consistent with what the Township Board's motion was at the May 9, 2019 meeting. As finally adopted on May 21, 2019 the boundary of Overlay Area 3 has not changed and includes the Industrial

zoned parcels along Dawn Avenue, Overlay Area 4 is the second tier overlay located on top of Overlay Area 3, encompassing Dawn Avenue industrial area. In the geographic area encompassed by Overlay Area 4, the following uses are permitted as articulated by the Township attorney: the uses allowed in the underlying Industrial zoning district are allowed in Overlay Area 3, and are allowed Overlay Area 4, strictly based on the meeting minutes and motions made by the Board which essentially created the language which serves as the zoning ordinance for medical marihuana in the Township.

Member Mansour stated the importance of the amendments was to continue to improve the ordinance and the evidence is there on May 9, 2019. The Township Board's intention was not to prohibit provisioning centers in Overlay Area 4.

Mr. Kuschel offered draft decisions that the ZBA could use to affirm or reverse the Director's Decision.

MEMBER LANE MOVED TO ADOPT THE DECISION AFFIRMING THE DECISION OF THE DIRECTOR OF COMMUNITY PLANNING AND DEVELOPMENT BASED ON THE FINDINGS OF FACTS AND INCORPORATING THE TOWNSHIP ATTORNEY RATIONAL.

SECONDED BY MEMBER MANSOUR.

FINDINGS:

1. The Township Board adopted the Medical Marihuana Overlay Map on January 24, 2019.
2. On the January 24, 2019 Map, the southern boundary of Overlay 3 is the Red Cedar River and includes the industrial parcels along Dawn Avenue.
3. On May 9, 2019, the Township Board adopted a motion to "establish a Second Tier Zoning District Overlay to only allow Growing Facilities in all of Zone 1 (Towner and Marsh), all of Zone 5 (Hagadorn) and the Industrial Zoning in Zone 3 (Dawn Avenue) of the adopted Overlay Map dated January 24, 2019."
4. With the creation of Overlay 4 on the Overlay Map, the Township Board's identification of former Overlay 5 along Hagadorn was renumbered to Overlay 6.
5. As finally adopted on May 21, 2019, the southern boundary of Overlay 3 is the Red Cedar River and includes the industrially zoned parcels along Dawn Avenue.
6. Overlay 4 is a second-tier zoning overlay located on top of Overlay 3.
7. In the geographic area encompassed by Overlay 4, the following uses are permitted:
 - a. The uses allowed in Overlay 4.
 - b. The uses allowed in Overlay 3.
 - c. The uses allowed in the underlying zoning district, the Industrial District.

Based on the record and on its exercise of judgment, the Zoning Board of Appeals concludes:

1. Section 86-445(e) describes the permitted locations of various medical marihuana facilities.
2. Provisioning Centers are permitted in Overlay 3. Section 86-445(e)(3).
3. Grower facilities are permitted in Overlays 1, 4, and 6. Section 86-445(e)(1).
4. Processor facilities are permitted in Overlays 1, 4, and 6. Section 86-445(e)(2).
5. Provisioning Centers are also permitted in Overlays 1, 2, 5, 6, and 7. Section 86-445(e)(3).
6. The language of the Ordinance provides that growers or provisioning centers may be "only" located in the identified overlays; each subsection does not exclude other uses because each overlay permits several different marihuana facilities.
7. The Township Board placed growers and processors in a "second tier" in all of Overlays 1 and

- 6, but only a portion of Overlay 3 (i.e., the portion of Overlay 3 comprised of Overlay 4).
8. The creation of the second tier did not remove provisioning centers from any overlay; there is no dispute that those facilities remain permissible uses in Overlays 1 and 6.
 9. Chapter 40 of the Township Code controls administration and operation of marihuana facilities but not land use determinations.
 10. Section 40-28(b)(6) relates only to the procedure to determine bonus permits in the lottery and it does not modify the zoning ordinance.
 11. Overlay 4 is a "second tier" that does not remove permissible facilities from Overlay 3.
 12. The Overlay Maps consistently show the southern border of Overlay 3 as the Red Cedar River, which necessarily includes the area along Dawn Avenue within Overlay 3.
 13. The May 21 Overlay Map denotes Overlay 4 with a **bold** red line within a portion of Overlay 3. The bold line shows that Overlay 4 is a second layer on top of the *light* red line denoting Overlay 3.
 14. Provisioning Centers are permitted in Overlay 3, and Dawn Avenue is within Overlay 3; therefore, Provisioning Centers are permitted along Dawn Avenue, and the application from BRT Capital 4 would be properly included in the Overlay 3 lottery.

DECISION: For the foregoing reasons, and based on the above findings, the Director's September 11, 2019 decision is AFFIRMED.

ROLL CALL TO VOTE: YES: Members Lane, Mansour, Field-Foster, Wisinski, Chair Beauchine
NO:
Motion carried unanimously.

MEMBER MANSOUR MOVED TO APPOINT MEMBER FIELD-FOSTER DULY ACTING SECRETARY OF THE ZONING BOARD OF APPEALS.

SECONDED BY MEMBER WISINSKI.

ROLL CALL TO VOTE: YES: Members Mansour, Wisinski, Lane, Field-Foster, Chair Beauchine
NO:
Motion carried unanimously.

7. OTHER BUSINESS

8. PUBLIC REMARKS

Chair Beauchine opened the floor for public remarks and seeing none closed public remarks.

9. BOARD MEMBER COMMENTS

Assistant Planner Quagliata noted the next ZBA meeting was November 13, 2019.

10. ADJOURNMENT

Meeting adjourned at 8:17 p.m.

Respectfully Submitted,

Justin Quagliata
Assistant Planner