

**CHARTER TOWNSHIP OF COMMERCE  
ZONING BOARD OF APPEALS MEETING**

*Thursday, January 23, 2020*

2009 Township Drive

Commerce Township, Michigan 48390

**A. CALL TO ORDER:** Rusty Rosman, Chairperson called the meeting to order at 7:00pm.

**ROLL CALL:** Present:

Rusty Rosman, Chairperson

Robert Mistele, Secretary

Rick Sovel

Bill McKeever

Clarence Mills

**Also Present:**

David Campbell, Planning Director

Jay James, Engineer/Building Official

Paula Lankford, Assistant to the Planning Director

Chairperson Rosman introduced the Members of the Board to those present, as well as Dave Campbell, Jay James and Paula Lankford. She reviewed the requirements for receiving a either a dimensional and/or sign variance from the Zoning Board of Appeals, including the fact that all standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. She also explained that if a petitioner's variance request is granted, they will receive their letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days, or 366 in a leap year, from the date of the approval letter. If the variance is used, it runs with the land; however, if it is not used, it expires. Lastly, she noted that any documents, photos or other items presented to the ZBA during the meeting by the petitioner to assist Board members in making a decision will be copied and retained for the permanent record.

**B. APPROVAL OF MEETING AGENDA**

**MOTION** by Mills, supported by Mistele, to approve the Zoning Board of Appeals Regular Meeting Agenda for January 23, 2020, as presented.

**MOTION CARRIED UNANIMOUSLY**

**C. APPROVAL OF MEETING MINUTES:**

**MOTION** by Sovel, seconded by McKeever, to approve the Zoning Board of Appeals Regular Meeting minutes of November 21, 2019, with the following corrections:

1. Page 4, Jay James, last paragraph at bottom of page, change to read as follows: *Jay James – Rusty asked me to **look at our ordinance and provide a sample**, based upon minimum size required under the ordinance for a 2-story house.*
2. Page 8, middle of page, change to read as follows: *Chairperson **Rosman** – Thank you very much.*

**MOTION CARRIED UNANIMOUSLY**

**D. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA:**

None.

**E. UPDATE OF ACTIVITIES IN COMMERCE TOWNSHIP:**

Rick Sovel – Township Board & Library

- New GFL Trash Service
  - Hopefully everyone in the audience who lives in Commerce has their new garbage cans. If you have an old brown can, please put it out and it will be removed.
  - With 15,000 cans to distribute, there were a few issues, but the transition has gone well and the Board is happy.

Kylie Kutney, Commerce Township Resident – If we still have the old can, should we just leave it out until they pick it up?

Dave Campbell – At this point, GFL will pick up any remaining Republic bins. If you don't want to keep your Republic bin, put it out on whatever day GFL picks up your trash and they will take it away.

Chairperson Rosman – Use the green can for the garbage.  
What about our Library Director, Rick?

Sovel – We do have one who started. I think she's still part-time. She was working between here and Walled Lake until they could find a replacement.

Bill McKeever – Planning Commission

- Nothing to report.

**F. OLD BUSINESS:**

**ITEM F1: PA18-0012 – ERIC MOJICA – TABLED FROM JANUARY 24, 2019 -  
REMAIN TABLED**

*Eric Mojica of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new home that will exceed the maximum number of 2 ½ stories allowed located at 8147 Farrant.*

*Sidwell No.: 17-01-431-008*

**PA19-0010 – LAURA FETZNER – TABLED FROM NOVEMBER 21, 2019 -  
REMAIN TABLED**

*Laura Fetzner of Commerce MI is requesting variances from Article 6 of the Commerce Township Zoning Ordinance to construct a new single-family home that will encroach into the required rear yard setback and both required front yard setbacks on a corner lot located at 3990 Watuga. Sidwell No.: 17-15-252-013*

**G. NEW BUSINESS:**

**ITEM G1: PA19-0009 – LEARNING RAINBOW PRESCHOOL – PUBLIC HEARING**

Chantal Cheesbro with Learning Rainbow Preschool of Commerce Township MI is requesting an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a monument sign that will encroach into the required front yard setback located at 2405 Benstein Road. Sidwell No.: 17-21-401-013

**Chairperson Rosman opened the public hearing.**

Chantal Cheesbro was present, on behalf of the Learning Rainbow Preschool, 2405 Benstein Road, to address the variance request.

Ms. Cheesbro – I requested a variance so that our sign can go perpendicular to the road, so that it's a little more visible for traffic coming from both ways. Right now, it's located a little further up on an island. Unfortunately, when you're driving, you're not really seeing it from the road as it is parallel. It's more confined in the summer when the trees are in bloom.

The Benstein Grille put their monument sign out and it's set up very well. The reason I requested the distance proposed is that we have that monument area there. I didn't want to have to redo all of the landscaping. That's why I requested that distance from the road. I think ours is like at 38.5'. I believe Benstein's is maybe 40' from the center of the road, which would still meet with the requirements for what I need. This will make the sign visible from the road without interfering with traffic. The height meets the requirements.

**There were -0- returns and -0- letters.**

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Mistele – I think due to the trees on the north side and then the elevation with the island, I think a conforming sign would be almost impossible to see from the road.

Mills – You had a wooden stake there when I was at the property, but I don't know the reference of that stake. Was that the middle of the sign? Is it the eastern or western edge of the sign?

Ms. Cheesbro – I had the sign company put it out. He had two stakes.

Mills – When I was there, there was only one wooden stake.

Ms. Cheesbro – There was one that showed height, and then there were two that showed the beginning and ending of the sign.

Mills – They must have been short and underneath the snow. I made a note to inquire about that one wooden stake.

Ms. Cheesbro – The wooden stake I'm assuming was the height of the sign. I believe he put the stakes out on the 11<sup>th</sup>. There was a stake in the front where the 38.5' from the center of the road would have been to the length of the sign, and then I saw a stake that showed the height. You didn't see any other stakes?

Mills – No, I was there on the 18<sup>th</sup> at 10:31am. I think that was shortly after we had quite a bit of snow.

Ms. Cheesbro – Do you need me to have him re-stake it?

Mills – No, not at this time. The other question I have is, should your variance be granted, what happens to that sign that's currently flying in the wind?

Ms. Cheesbro – On the flag post? That comes and goes. I take it down when it's not needed.

Mills – If your variance is granted tonight, and you put the sign in, what happens to that? Will it go away permanently, or will it come and go?

Ms. Cheesbro – That's a temporary sign. I'm not sure.

Jay James – It's against the ordinance.

Chairperson Rosman – It has to go.

Ms. Cheesbro – So currently, I have two signs is what you're telling me.

Dave Campbell – And one of them is technically not a permitted sign. Any kind of temporary, portable or flag-style sign is not permitted, regardless of whether you have a permanent sign or not. We don't allow that type of sign at all.

Sovel – I just want to make sure you understood and get it on the record; can you acknowledge that you will permanently remove that temporary sign. That sign will disappear completely, not just from the at the road but from any other place on the site. That sign cannot be used. Are you okay with that?

Ms. Cheesbro – Yes.

Sovel – Let the record reflect that.

McKeever – I have no questions.

Chairperson Rosman – I do. First and foremost, the Zoning Board of Appeals cannot consider financial need of the applicant. The fact that moving landscaping and such, which is a one-time thing that you'd have to do, is not a consideration of ours. I'm also looking at the Benstein Grille sign, and they did receive a variance of 40' from the centerline of Benstein Road. Their exception was 35'. You're asking to be in front of theirs and I don't think that's necessary at all. I believe that you could very easily live with the same setback as they do. You're asking to be 4.2' closer to the road than the Benstein Grille. It makes no sense to me to allow you to be closer. You've said yourself that they have a very good sign that's visible from both ways. I don't see a need to increase the degree of nonconformity, and that would be a mishandling of our responsibility if we gave you a greater variance than the person next door. Our job is to give the least amount of variance necessary. I agree that your sign needs to be perpendicular and I have no problem with that. I hope that my fellow Board members

will consider the concept of the Benstein Grille sign at 40' from the center of the road, which would still give you what you want.

Ms. Cheesbro – Okay.

Sovel – What would the number be now?

Dave Campbell – If we were to follow Rusty's direction, instead of a variance of 39.2', you'd be considering a variance of 35'. In other words, the sign where she's proposing it would have to be pushed back another 4.2' closer toward her building and away from the road. That would put it right in line with Benstein Grille.

Sovel – I don't recall in the past when we've ever made one variance conditional upon another property's variance.

Chairperson Rosman – I didn't say that.

Sovel – It's part of the discussion and we don't want to set a precedent by mentioning the Benstein Grill in the motion.

Chairperson Rosman – Okay, fair.

Dave Campbell – I would agree with that.

Mills – I'm wondering now if she's in agreement to changing this number from 39.2' to 35'.

Ms. Cheesbro – Yes.

Chairperson Rosman – She just said yes.

Mills – Okay. Can we make that motion without any problems regarding how it was posted?

Sovel – You can make the variance smaller but not larger.

Dave Campbell – Yes, because you would be approving a lesser exception than what she's asking for. If you decided to let her make it closer to the road, then we would have to put a new notice in the newspaper and bring this back to the next meeting.

Chairperson Rosman – You're comfortable with the 35', correct?

Ms. Cheesbro – Yes.

Dave Campbell reviewed the recommended motion language provided in the review letter, along with two potential conditions.

**MOTION** by Rosman, seconded by Mills, **to approve, with conditions**, Item PA19-0009, the request by Chantal Cheesbro with Learning Rainbow Preschool of Commerce

Township MI for an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a monument sign that will encroach into the required front yard setback located at 2405 Benstein Road. Sidwell No.: 17-21-401-013

Based on the presentation and comments we have heard, I believe the applicant – Chantal Cheesbro of Learning Rainbow Preschool has satisfied the standards of Section 30.09 of the Township Zoning Ordinance for granting an exception to the required front yard setback for a freestanding sign along Benstein Road, and therefore I make a motion to **approve the request for the exception of 35.0 feet** relative to the front setback requirement of Section 30.03.F of the Zoning Ordinance.

**Approval is conditional upon the following:**

1. All other signage on this site, both permanent and temporary, must comply with the current standards of the Zoning Ordinance. Currently, there is a flag-post or flag-style sign, as discussed herein the minutes, and the petitioner agrees to completely remove that temporary sign as it does not comply with the ordinance.
2. The freestanding sign is to be removed and replaced at the owner's expense if and when necessary for work within the planned 60-foot half right-of-way of Benstein Road. If the road is widened, that also applies.

**Approval is granted for the following reasons:**

- A. A conforming sign would not be as visible to passing motorists;
- B. The exception will not be adverse to the character or appearance of the surrounding buildings, properties or neighborhoods;
- C. The exception is least necessary to reasonably accomplish the signs purpose;
- D. And, the exception will not result in a sign that is significantly contrary to the intent and purpose of the sign ordinance.

**MOTION CARRIED UNANIMOUSLY**

Dave Campbell noted that there will be a water main installed along Benstein Road within the next year. It will be on this side of the road. Jay James agreed and added that it will likely take place in the Spring/Summer of 2020. Jay stated that before Ms. Cheesbro moves forward, she should call the Township so that staff can check with the engineer to see if this will present any conflicts for her sign. No one would want to see her put in a brand new sign and then soon thereafter, have to take it back down due to the water main installation.

**ITEM G2: Zoning Board of Appeals Bylaws**

Chairperson Rosman – Anyone have any comments, changes, corrections?

Mills – Yes, on Page 6, 4.6.E, *Members of the ZBA will report on any personal site inspection and any personal conversations with the petitioner.*

I guess I'd look for a little bit of clarification on that. There have been occasions when I've been to a property and identified myself, and the property owner comes out and they explain what's going on. Sometimes I may know who the people are so there is some conversation. What is the expectation of 4.6.E?

Chairperson Rosman – It says, *For a public hearing held as required by State Law ... the following procedure shall be followed ...*

I believe it is saying that we have to say at the public meeting that we spoke with the petitioner.

Dave Campbell – It's good practice to acknowledge any conversations you've had. Saying hello and how are you doesn't necessarily apply, but if there is any kind of conversation where they're making their case to you while you're standing there, and if you have replied or given feedback, that could be construed as they are making their case outside of the courtroom. So, it's just good practice that if you have those types of conversations, to at least acknowledge them.

Mills – Acknowledge it here.

Dave Campbell – Yes, please.

Chairperson Rosman – All right, thank you. Please let the record reflect, we had a question answered and everything else seemed to be fine.

**MOTION** by Sovel, supported by Mills, that we approve the Commerce Township Zoning Board of Appeals Bylaws as written.

Discussion –

Sovel – I do have a question. Were there any changes from last year?

Paula Lankford – There was one change that the ZBA members made last year.

Chairperson Rosman – What was the change?

Paula Lankford – Bob asked to make a change.

Mistele – Yes, basically it was that the alternate member should attend all meetings as opposed to at the direction of the Chair.

Sovel – On that topic, are we doing anything for an alternate replacement?

Dave Campbell – Supervisor Scott and I are both aware that we're short an alternate and we need to take care of it.

Sovel – Can I suggest that we add something in here that states that if we lose an alternate, we request that the Supervisor begin a search for a replacement within a certain period of time?

Discussion continued regarding Sovel's suggestion and the time frame for beginning the process to seek a ZBA alternate replacement. It was decided that this language would not indicate an end date, or that the process had to be completed within a certain number of days; only that the process *begin* within 30 days of the position being vacated.

The final language suggested to be added was; ***Within 30 days of the ZBA alternate position being vacated, the Township Supervisor will begin the recruiting process to seek a replacement.***

Mistele – Should this be limited to only the alternates, or should it apply to any vacancy on the Board?

Sovel – The Township fills the other vacancies. However, is the alternate automatic as a replacement?

Dave Campbell – I think it requires Board action, but it's something of a formality.

**MOTION CARRIED UNANIMOUSLY**

**H. OTHER MATTERS:**

Paula Lankford – If you are having trouble with getting your emails, please come in and see me and Dave at the Township and we will help you. I would ask that you look at

your emails at least once every day or once every other day. When I'm trying to set up a special meeting or get a hold of you, I have to call everyone. Emails are great!

Dave Campbell discussed ZBA training available through Oakland County. It's something they do once per year. He asked anyone interested to contact the Planning Department and staff will assist with registration.

**I. CORRESPONDENCE:**

None.

**J. PLANNING DIRECTOR'S REPORT:**

Nothing further to report.

**K. ADJOURNMENT:**

**NEXT REGULAR MEETING DATE: MARCH 26, 2020 @7:00PM**

**MOTION** by Sovel, supported by Mills, to adjourn the meeting at 7:37pm.

**MOTION CARRIED UNANIMOUSLY**

---

Robert Mistele, Secretary