

**FINAL**  
**CHARTER TOWNSHIP OF COMMERCE**  
**\*\*ELECTRONIC ONLY\*\***  
**PLANNING COMMISSION MEETING**  
Monday, August 10, 2020  
2009 Township Drive  
Commerce Township, Michigan 48390

Due to Governor Whitmer's Executive Orders, this meeting was held via Zoom, video conferencing technology.

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

**ROLL CALL:** Present:

Larry Haber, Chairperson  
Brian Parel, Vice Chairperson  
Brian Winkler, Secretary  
Bill McKeever  
George Weber  
Chelsea Rebeck  
Sam Karim

Also Present:

Dave Campbell, Township Planning Director  
Jay James, Engineer/Building Official  
Paula Lankford, Assistant to the Planning Director  
Ken Milburn, Meeting Moderator, Merge Live  
Mark Stacey, DDA Director

**A. 1. INTRODUCTION OF KEN MILBURN, PRESIDENT OF MERGE LIVE LLC**

Dave Campbell – Ken, please give a quick introduction of who you are, what your company does and what your role is going to be with Township meetings during this age of holding remote, virtual meetings.

Ken Milburn – Thank you, Dave. I'm the President of Merge Live. We provide digital content for many different customers, primarily in the corporate and government spaces. For this particular meeting, we will be providing Zoom support and hosting. We also do in-person with cameras, and certainly you're welcome to indulge yourself on our website if you'd like to see all the types of various content that we create. For Commerce Township, we will be providing Zoom support and hosting for most of the Township meetings. Obviously, we're starting with the Planning Commission today, and we did previously do the Board of Trustees and Parks and Recreation. Meetings will be streamed out live on YouTube. The YouTube link is found on the Commerce Township website. You can watch the meeting live; there is an 18-second delay on average. Then of course, the meeting will be there once completed and you can review it at your leisure. We will provide phone support. Residents will be calling in over a telephone and we will unmute callers' lines and allow them to speak. I'll look to the board to let me know when we should move on to the next caller. All callers are allowed into the meeting. Every telephone caller is allowed in these meetings and will be muted, but I'll need to have the board tell me when we're at an open point and I'll handle the calls with questions and comments.

Chairperson Haber – Thank you. Good to meet you and good luck.

**A. 2. INTRODUCTION OF NEW PLANNING COMMISSION MEMBERS – SAM KARIM AND CHELSEA REBECK**

Chairperson Haber – We've already introduced the new Commissioners, Chelsea and Sam, but I'd like to start with you Chelsea. Just give us about a 30-second bio.

Chelsea Rebeck – I am an Attorney and CPA with a law firm in Southfield. I've lived in Commerce Township since 2013 and just moved into my second home in the Township. I really love living in Commerce. I'm very active in various boards with the State Bar. I really wanted to be more active in my local community. I'm grateful that you've let me join the Commission and I'm hoping to provide some value with my service and a different perspective from what you previously had. Thank you.

Chairperson Haber – Welcome. Sam, what do you have for us?

Sam Karim – I have a master's degree in Health Facility Planning and Programming. I have some background in Planning besides designing hospitals. I just retired two years ago and started building a house in Commerce Township. I moved into it a few months ago and I'm really willing to participate and serve this community with all my ability. I'm very optimistic.

**B. APPROVAL OF AGENDA**

**MOTION** by Winkler, supported by Rebeck, to approve the Planning Commission Regular Meeting Agenda of August 10, 2020, as presented.

**ROLL CALL VOTE**

**AYES:** Winkler, Rebeck, McKeever, Weber, Parel, Karim, Haber

**NAYS:** None

**MOTION CARRIED UNANIMOUSLY**

**C. APPROVAL OF MINUTES**

**MOTION** by Weber, supported by Parel, to approve the Planning Commission Special Meeting Minutes of July 13, 2020, with one spelling correction as noted by Winkler on Page 3 to replace *Kareem* with *Karim*.

**ROLL CALL VOTE**

**AYES:** Weber, Parel, Karim, Rebeck, McKeever, Winkler, Haber

**NAYS:** None

**MOTION CARRIED UNANIMOUSLY**

**D. UPDATE OF ACTIVITIES**

Bill McKeever – Zoning Board of Appeals

- Nothing to report from the ZBA.

George Weber – Township Board of Trustees

- We've had two meetings since the last Planning Commission meeting.
- Most importantly at those meetings, we officially approved Chelsea and Sam to the Planning Commission.
- A couple other items of note; the sale of the Library site. We provided Bruce Aikens an additional year on his option to buy that land. With everything going on

with the pandemic and the significant contraction of retail and hospitality, i.e. hotels, we thought it was the prudent thing to do to give him an additional 12 months with which to purchase and/or close on that property. Once we get to Mark, he may have more to add.

- At the Township Board discussion meeting, a couple of points:
  - We're going to develop a subcommittee and start looking at what we want to do with parcels of property the Township owns.
  - The Township owns over 140 individual parcels.
  - Some of that we obviously want to keep for greenspace, and some for future development.
  - There's a number of parcels that might be adjacent lots that potentially and adjoining property owner might want to purchase for a fair price.
  - We're going to start looking at that.
- We are continuing, albeit incredibly slowly, to move forward with the Township employee evaluation process.
- We are discussing with the Maintenance Department how best to utilize their services. Right now, they're on a 4-day a week work schedule, but many of them are on call as we have Richardson Center open 5 days a week, Library 7 days a week, Fire Department 7 days a week. We're going to be working with Maintenance Director, Mark Schoder on that.
- The all-important budget process is just beginning.

Brian Winkler – Downtown Development Authority

- At the July 21<sup>st</sup> DDA meeting, there were a number of items discussed.
- The first is that Bruce Aikens received a 12-month extension for purchase of the Library parcel. Bruce remains upbeat as tenants look to extricate from indoor mall environments.
- There was a big tenant in town for a tour 8/4-8/5. I suspect Mark Stacey will have some updates on that.
- Bruce is also negotiating with Galbraith/Shapiro on the residential portion of Five & Main. They're hoping to start construction possibly in Spring 2021.
- Galbraith also anticipates occupancy of Barrington in the first quarter of 2021. Construction is roaring ahead on that project.
- There is a potential buyer for the Granger property that is for sale. They're looking at subsequent phases of that development.
- There was a Letter of Intent from Kellie McDonald for Goddard School to purchase of Parcel L, which is directly east of the Pulte development along Haggerty.
- The DDA owns Parcel K which is access point to a parcel owned by private developer, at the southeast corner of Pontiac Trail and M-5. They're looking at possibly a storage facility. Two proposals are to be brought back to the DDA in August. The developers have been made aware of the high-end nature of other developments in the DDA area and the challenges they might face.

Mark Stacey – I think Brian stole most of my thunder on that. Obviously, we've been working with Bruce. I think he's got a couple of exciting ideas of how to get this

development kicked off. He knows that it's key to get steel rising up from the ground. Working on the residential with Galbraith would be a huge positive. We are working through the COVID crisis, waiting for direction from the marketplace as to what will solve this set of issues; what type of downtown we need to be able to attract tenants. We will keep working on it and keep reporting back.

Jay James – Building Department

- Building-wise, we have a lot of inspections right now, but plan reviews are down.
- That doesn't surprise me as we had the COVID stoppage, and a backlog of inspections.
- We are seeing a lull in new plans, and especially new houses.
- Barrington has been moving forward, like Brian said.
- We did have a pre-con on Windwheel Estates on Benstein and Loon Lake. They hope to get started on at least their infrastructure this fall and hopefully start building next spring.
- I would expect next year to be down a little from what it is this year.

#### **E. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

Dave Campbell, Chairperson Haber and Ken Milburn discussed opportunities for the public to speak, including this agenda item, and three public hearings on the agenda.

#### **Chairperson Haber opened to Public Discussion of Matters not on the Agenda.**

Ken Milburn – If callers have a question or comment, please press \*9 on your keypad. That will alert me that you would like to speak and I will unmute your line. We will ask for your name and address for the record.

Mr. Haber, I'm not seeing any raised hands at this time.

#### **Chairperson Haber closed Public Discussion of Matters Not on the Agenda.**

#### **F. TABLED ITEMS**

None.

#### **G. OLD BUSINESS**

None.

#### **H. SCHEDULED PUBLIC HEARINGS:**

##### **ITEM H1: PSU20-02 – KROGER – SPECIAL LAND USE**

Jason Canvasser representing The Kroger Company of Novi MI is requesting a Special Land Use to expand the license of an existing off-premise alcohol sales outlet to add a Resort SDD License to the existing Kroger store located at 2905 Union Lake Road. Sidwell No.: 17-12-276-008.

Dave Campbell – Back in March, we received a letter from the Michigan Liquor Control Commission (MLCC) alerting us that the Kroger Company had applied for a resort, specially designated distributors license for their store at 2905 Union Lake Road.

Until now, that store has sold beer and wine only, but has not sold packaged spirits. They applied for the resort SDD license so that they could add packaged spirits to their existing inventory of packaged beer and wine. When the Township received that letter from the MLCC, we replied to the State with our formal objection, saying that for Kroger to be able to do that, they would require Special Land Use approval from Commerce Township. We alerted the MLCC that Kroger had not yet applied for, nor received that Special Land Use approval. In July, Kroger made their formal application by way of their attorney, Mr. Jason Canvasser, who has joined us this evening.

As the Planning Commission is aware, the Township adopted new standards back in 2017, specifically related to off-premises alcohol sales outlets (OPASOs). These are stores that sell packaged beer, wine and liquor for consumption elsewhere. These are not bars and restaurants where you order a drink and consume it on premises – that's a different type of license.

The Township established new regulations designating any OPASO to be a Special Land Use. If anyone came in for a new OPASO, or was looking to expand an existing OPASO, that would be the trigger for them requiring Special Land Use approval from Commerce Township. In this case, Kroger is looking to expand, not their store per se, but their license. That too is a trigger requiring Special Land Use.

Within our standards for OPASO, we have a number of limitations; things like spacing minimums between OPASOs from land uses such as parks, schools and daycare centers. There are spacing standards between one OPASO to the next; we don't allow two within any one mile. There are also standards for the hours of operation, particularly when they are adjacent to a residential zoning district.

Also in that section are exceptions to those limitations, and one of the exceptions notable for this evening is for full-scale supermarkets which are more than 20,000 square feet, and that have a minimum of 51% of gross receipts for items not age-restricted.

Kroger would qualify as an exception to our standards for OPASOs. They would be an exception to the limitations for spacing standards. However, Special Land Use approval is still required, and you as a Planning Commission are to consider them as a Special Land Use relative the criteria, particularly within Section 34.08 of the Zoning Ordinance. There are 8 specific criteria that any Special Land Use is to be gaged against prior to the Planning Commission taking any action.

The Planning Commission's role this evening is to hold a public hearing for this item, as we would for any Special Land Use, which includes opening and closing the hearing and receiving any public comments. Kroger has brought some team members that will want to make a presentation on their own behalf. I think they're being led by their attorney. Once the Planning Commission closes the public hearing, it's their option to seek any more information from me, or from the Kroger team, and also have a discussion amongst themselves. If the Planning Commission is ready to make a decision, then you have the option to approve, reject or table their petition.

Some things that are required per our Zoning Ordinance for a store such as Kroger, even though they are subject to the limitations and spacing standards, is that it must be demonstrated to the Planning Commission's satisfaction that Kroger has not had a history of having negative secondary effects. Those would include things like noise, crime, disorderly conduct, light shining in people's windows, odors, et cetera. Part of the Planning Department's review was to reach out to the OCSO, and we received a report

from Lt. Reyes, the leader of our substation, giving us 3 years' worth of data of calls to the Commerce Township Kroger on Union Lake Road. We received the data of any incident reports at that location, and we followed up with Lt. Reyes for her opinion. She felt they were a responsible operator.

Kroger, for their part, submitted a number of materials including a summary of their gross receipts, demonstrating they are well in excess of 51% sales of items other than age-restricted items.

Kroger has brought along their team, local store manager, regional folks from the corporate office, and they would also like to give you an overview and a presentation, and answer any questions you may have. One more reminder, this is a public hearing, so we will need to open and close the hearing per State law.

Chairperson Haber – Who is going to speak for Kroger?

Jason Canvasser – That would be me. Thank you Mr. Campbell and members of the Planning Commission. I'm with the Clark Hill Law Firm, 500 Woodward Ave, Ste 3500, Detroit, MI, 48326. I represent Kroger.

With me tonight is the Store Manager, Bryce Brattina. Brandon Olley is also on the phone; he is the Kroger Michigan Division Manager. Also with us is Rachel Hurst, she is the Corporate Affairs Manager.

We appreciate your time tonight. As Mr. Campbell indicated, we are seeking a resort SDD license to be able to sell packaged spirits at the Union Lake Kroger store. Kroger has two locations in Commerce and they're very vested in the community. They made a big investment, and they continue to want to make a big investment.

We believe we've met all the requirements of Section 34.08, and so we ask you tonight to grant the Special Land Use application. Among those requirements is that a documented immediate need exist for the proposed use. Before COVID hit, consumers demanded a wide array of products in their store. COVID has really expedited that and necessitated the need for store shoppers to be able to go to one location and not have to go from store to store. Being able to purchase alcohol and groceries is now not only a safety concern, but it's a necessity and something that consumers demand. We believe we meet that prong of the test.

We are already selling beer and wine at this location. The store is not going to change. There is not going to be any construction. In fact, the area in which beer and wine sales occurs is not going to change, but rather some of the beer and wine product is going to be removed and replaced with spirits, if this request is approved by the Planning Commission, and by the MLLC. We believe the use is compatible with adjacent uses and the master plan.

This use does not violate any applicable regulations. It will not impact public services or traffic. Public services and traffic should remain unchanged. Beer and wine, and even the addition of spirits if approved, are still going to account for less than 10% of the total sales in this store. Also, we believe the environmental and public health, safety and welfare will not be adversely impacted.

Kroger goes to great lengths to ensure that their employees sell all age-restricted products in a responsible manner. Kroger sends all their employees through training. They have internal training. When it comes to alcohol sales, they get all of their employees approved through a MLLC approved training program call TIPS. They bring

in outside consultants. They gather together and talk about checking IDs, politely refusing sales, spotting signs of intoxication and making sure sales are done in a responsible manner.

The point-of-sale equipment requires that IDs be checked or scanned. Again, another step to make sure Kroger is selling age-restricted products responsibly. Kroger is going on 3+ years since its sale to a minor at this location. Kroger has very robust policies throughout the entire state in regard to the sale of alcoholic beverages and what happens to their employees if there's a violation. Depending upon whether or not that employee is unionized, that may result in immediate termination. Otherwise, union contracts require suspension. Kroger is a little hamstrung in terms of what they can do, but they always take affirmative action in the event of a problem employee.

Kroger also has high-end products either under bottle locks, or in a security case, and the store has numerous safety measures to try to prevent theft in the store. We believe the standards as set forth in 34.08 have been met.

Again, alcohol sales are a small but very important component. Consumers want that bottle of scotch to enjoy with the family. They want to be able to make margaritas for their small gatherings. COVID has really made those small gatherings even more important. Being able to go to one store, get everything you need and do it in a safe manner is of the utmost importance.

We ask that you approve the Special Land Use request. We are happy to answer any question. Finally, I would request that if there is any public comment, that I'd have a moment to address it.

#### **Chairperson Haber opened the public hearing.**

Ken Milburn requested that callers press \*9 on their keypad if they wished to speak. There were no raised hands and no comments.

#### **Chairperson Haber closed the public hearing.**

#### **Commission Comments:**

McKeever – I understand what Kroger is trying to do, I just don't believe they meet the criteria of the first item. I don't think there is a need. If it's available within the neighborhood, then I don't see where that's a documented need.

Quite frankly, there's hundreds more people in Kroger store at any given time than there is in any other store, so I don't see where calling out the COVID crisis changes that issue at all. I wouldn't vote in favor of this.

Weber – I also had a question regarding the first standard for the documented immediate need, but based on what Jason added to the information in our packet, I'm okay with it.

Vice Chairperson Parel – I think I have a duty to disclose a couple of conflicts here. Although I have these conflicts, I think I could be unbiased and make a proper decision benefitting Commerce Township, but I have a good relationship with all of these folks from Kroger. I've actually worked for the Canvasser family and done business with them. I consider them friends. Kroger has also generously donated to several charity

functions I've had. I still think I can be unbiased, but I will leave that up to the board. I'm overly cautious and I want to make sure the board agrees.

Discussion took place regarding Parel abstaining from the vote, and Chairperson Haber polled the Commissioners.

**MOTION** by Weber, supported by Winkler, that Brian Parel recuse himself from decision making regarding Item PSU20-02, the Resort License for Kroger on Union Lake Road.

**ROLL CALL VOTE**

**AYES:** Weber, Winkler, McKeever, Rebeck, Karim, Haber

**NAYS:** None

**ABSTAIN:** Parel

**MOTION CARRIED**

Rebeck – All of my questions were addressed with the additional information that was presented by Jason. I'm good at this point.

Karim – I'm good.

Winkler – I agree with George Weber, I don't see an issue with this petitioner's idea.

**MOTION** by Weber, supported by Rebeck, that the Planning Commission approves, with conditions, Item PSU20-02, Kroger Special Land Use, the request by Jason Canvasser representing The Kroger Company of Novi MI for a Special Land Use to expand the license of an existing off-premise alcohol sales outlet to add a Resort SDD License to the existing Kroger store located at 2905 Union Lake Road.

Sidwell No.: 17-12-276-008.

Move to approve PSU#20-02, a special land use for The Kroger Co. of Michigan for Store #00729 at 2905 Union Lake Road, to expand their liquor license from a Specially Designated Merchant (SDM) to a Resort Specially Designated Distributor (Resort SDD). The Planning Commission's approval is based on a finding that the applicant has demonstrated to the satisfaction of the Planning Commission that the proposed use qualifies as an Exception to the Limitations of Sec. 26.316.D, and complies with the applicable standards of Sections 34.08 and 26.316 of the Commerce Township Zoning Ordinance.

**Special land use approval is based on the following conditions:**

1. Obtain any and all necessary permits with the Building Department for the interior buildout;
2. Provide a copy of the license issued by the State's Liquor Control Commission.

**ROLL CALL VOTE**

**AYES:** Weber, Rebeck, Winkler, Karim, Haber

**NAYS:** McKeever

**ABSTAIN:** Parel

**MOTION CARRIED**

**ITEM H2: PZ20-03 – COMMERCE TOWNSHIP – ZONING ORDINANCE TEXT AMENDMENT**

An amendment to the Commerce Township Zoning Ordinance, to amend Article 23, I - Industrial District, Section 23.01 Table of Permitted Uses, to remove the required

conditions set forth under the listed use “Lumber yards, Landscape, building supply yards and similar uses that involve outdoor storage”.

Dave Campbell – This is a Township initiated text amendment to Article 23 of our Zoning Ordinance. Article 23 is specific to our I – Industrial Zoning District, the land uses that are permitted in that zoning district and the criteria by which those land uses have to comply in order to be permissible.

This proposed text amendment was generated by a proposal that you as a Planning Commission have seen, specifically the proposal by 84 Lumber to acquire three properties within the Homestead Industrial Park development along Pioneer Drive, on the west side of Martin Road. One of the properties is an improved property with a building on it, and 84 Lumber would like to retrofit that building and the vacant properties next to it in order to do a traditional lumberyard. The existing building would be their retail store, and a lot of the inventory would be inside the store, but on the undeveloped lots adjacent to the west and to the north of the building would be their outdoor storage of lumber.

When the Planning Commission saw this as a concept plan, we made it clear to 84 Lumber that if they are going to proceed with this project, it has to be a well-screened and attractive lumberyard. The reason we can control that is because the properties in question are currently zoned TLM. The only zoning district where the Township allows outdoor lumberyards are in our I – Industrial Zoning District. We discussed a Conditional Rezoning with 84 Lumber so that they could do a lumberyard with outdoor storage, but we made it clear to 84 Lumber that one of the conditions in the agreement that we expect them to volunteer is a very well-screened outdoor lumberyard, with a combination of fencing, a berm, landscape screening and probably all of the above in order to adequately screen the outdoor lumberyard.

It came to our realization that there's a caveat for lumberyards in the Industrial Zoning District, and that is lumberyards are not permitted if they also happen to fall into the Township's DDA area. In doing our homework, we realized that caveat was put into place in 2005 when the Township's DDA boundaries had a lot of Industrial zoned property, particularly along the Martin Road corridor. Since then, most of those properties formerly zoned Industrial were rezoned to Office Research, and then rezoned again in 2015 to TLM. By rezoning all those properties, the caveat that you can't have a lumberyard in the Industrial within the DDA became something of a moot point.

The proposal to remove that caveat doesn't appear to really have much of an impact, except for 84 Lumber who wants to do a Conditional Rezoning to Industrial so that they can have their lumberyard in the Homestead Industrial Park.

This is an amendment to our Zoning Ordinance so this does require a public hearing. The Planning Commission's role, if you do want to take action this evening, would be to make a formal recommendation to the Township Board on the amendment to our Zoning Ordinance.

Chairperson Haber – Mark, anything you want to join in here with?

Mark Stacey – Certainly, we have taken a look at this and Dave and I have had discussions as to where else a lumberyard would fit. We feel very comfortable making this amendment because it is an improvement for that area. We don't see it being an issue anywhere else.

**Chairperson Haber opened the public hearing.**

Ken Milburn requested that callers press \*9 on their keypad if they wished to speak. There were no raised hands and no comments.

**Chairperson Haber closed the public hearing.**

**Commission Comments:**

McKeever – I don't have any questions.

Weber – Dave, one of the areas of concern I had with the 84 Lumber project was traffic on Pioneer. I think we had provided some questions. Was there anything back from them regarding a traffic study for impact?

Dave Campbell – We did not, as I recall, ask them to do a traffic study. That would be included as one of the things that is meant to be considered as part of the Conditional Rezoning when we get to that point. I do recall conversations about Pioneer Drive; it is a private road owned by the property owners within the Homestead Industrial Park. We did tell them that, before you get too far with the Township, you would want to go to the Homestead Industrial Association and ensure that they're not going to present any challenges as far as using their private road for an arguably more intensive retail type use such as a lumberyard. They tell me that they did have those conversations with Homestead and the Association is comfortable with the use so long as they pay their fair share for plowing, maintenance, repairs, et cetera. When they make formal application for a Conditional Rezoning, one of the items the Planning Commission and Township Board are to look at is impacts on traffic.

Weber – Thanks for that, and I'm okay with this text amendment.

Vice Chairperson Parel – I have no other questions.

Rebeck – I don't have any questions.

Karim – I don't have any questions.

Winkler – I have no issues with what's being presented as far as the amendment to Article 23, but I do want to reiterate what the Planning Commission mentioned when we first saw this project. That is that we'll be looking really hard at this project being properly screened and properly built, and being a good-looking project given the fact that it's in an area that it will be an improvement to the site.

Chairperson Haber – When we get the site plan, we can make it happen the way we wish to have it done.

Dave Campbell – Paula is my witness. Every time I talk to 84 Lumber guys, I repeat myself that this has to be a really good-looking lumberyard.

**MOTION** Parel, supported by Karim, that the Planning Commission **recommends approval**, to the Commerce Township Board of Trustees, Item PZ20-03, Commerce Township Zoning Ordinance Text Amendment. An amendment to the Commerce Township Zoning Ordinance, to amend Article 23, I - Industrial District, Section 23.01 Table of Permitted Uses, to remove the required conditions set forth under the listed use “Lumber yards, Landscape, building supply yards and similar uses that involve outdoor storage”.

Move to recommend the Commerce Township Board of Trustees approve PZ# 20-03, an amendment to Article 23 of the Commerce Township Zoning Ordinance, Section 23.01 Table of Permitted Uses IN the I-Industrial zoning district, to eliminate the prohibition of “Lumber yards, landscape, building supply yards and similar uses that involve outdoor storage” within the boundaries of the Downtown Development Authority (DDA). The Planning Commission bases the recommendation on a finding that the prohibition has effectively been rendered irrelevant since the adoption of the TLM zoning district, and that any effort to re-zone a DDA property to I-Industrial for the purpose of developing a lumber yard would be carefully controlled through the Conditional Rezoning process of Article 36 of the Commerce Township Zoning Ordinance.

**ROLL CALL VOTE**

**AYES:** Parel, Karim, Winkler, McKeever, Weber, Rebeck, Haber

**NAYS:** None

**MOTION CARRIED UNANIMOUSLY**

**ITEM H3: PZ20-04 – COMMERCE TOWNSHIP – ZONING ORDINANCE TEXT AMENDMENT**

An amendment to the Commerce Township Zoning Ordinance, to amend Article 33, General Provisions, Section 33.02 Fences, to amend the language for fences surrounding waterfront swimming pools; and Section 33.03 Swimming Pools, Spas, and Hot Tubs to amend the language and to add criteria regarding required fences.

Dave Campbell – I’ll go first, and Jay can jump in because he deals with this issue more than I do. This is a text amendment that was discussed with the Planning Commission more informally back in July. We got some good direction and hopefully that has been encompassed into the proposed text amendment. The idea in general terms is to allow folks who live in a lakefront home to install a pool between their house and the lake, but also have some reasonable standards for the fencing around that pool.

Obviously when you have a pool, per Building Code, you have to have a fence for safety and security reasons. The Township has agreed that automatic safety covers are not a sufficient substitute for having a 4’ physical fence around a pool. That language is included as part of this amendment. This allows pools on the lakeside to be enclosed by a fence, but to not let that fence encroach too close to the lake; specifically, to not come within 25’ of the edge of the lakefront. Also, the fence between the edge of the pool and edge of the lake cannot extend anymore than 10’ from the edge of the pool. The idea here is so that folks don’t enclose the better half of their backyard, more than they need to by means of a pool, to kind of use that as a way to also enclose their backyard. We’re looking for people to have and enjoy their pools, and for those pools to be safe, both for them and for their neighbors, and also protect the views of the neighboring property

owners so that view is not impeded by a fence. Also, if you're out on the water and looking back, you're not seeing fences zigzagging across all the properties that front on the lake.

Jay James – This is really directed to clarify a corresponding ordinance. Our fence ordinance, which does not allow a fence parallel to the water, and then the one for our swimming pool ordinance which requires for it to be fenced in. You can't do both of those at the same time. I think this ordinance which Dave wrote up will take care of that. Hopefully we won't have any more issues.

Chairperson Haber – We all want to make your job easier, Jay.

Jay James – That's my goal as well.

**Chairperson Haber opened the public hearing.**

Ken Milburn requested that callers press \*9 on their keypad if they wished to speak.

Brett McDonald, 9135 Commerce Road, Commerce Township – I have a question. You say 25'? So, 25' to the water, the fence must be, is that what you're saying?

Jay James – Yes, the fence cannot be in the required waterfront setback, which is 25'. So, in no case shall the fence be any closer than 25' to the water's edge.

Brett McDonald – The other comment is, I guess the confusion I've always had on this; so, if I have a pool in my backyard, if you walk 10' and drown in the lake, that's okay? But if you walk 10' and drown in my pool, that's not okay. The ironic thing here is fences on a lake – it just seems interesting. But the 25' is what I have an issue with. I know it's 50' to the water, so now you're saying 25', that seems interesting.

Jay James – Well, the setback for your house to the water is determined by the average of the setbacks of the two neighboring properties.

Brett McDonald – But you're not allowed to build a deck within 50' of the water, and now...

Jay James – That's not true. You can, depending upon what the setbacks are for the neighboring properties. The whole idea is to protect the viewsheds. If your two neighbors are built out 25' from the water's edge, and your house is 40' back, you could put a deck on between your house and the water, but you couldn't go any closer than 25'.

Brett McDonald – I understand that concept, but you guys actually made my neighbor tear his deck down because it was too close to the water because it wasn't 50'. Interesting, but I would say as a citizen that this 25' from the water for a fence, I think that's way too much. I think it should be like 10' because I live on Lower Straits, and I know there's people that got fences within 5' of the water. It's very hard to build a pool in

your backyard and be 25' from the water. I think that's essentially meaning you can't build a pool. That's my comment.

Ken Milburn again requested that callers press \*9 on their keypad if they wished to speak. He saw no other callers.

**Chairperson Haber closed the public hearing.**

**Commission Comments:**

The Commissioners had no questions or comments to add.

**MOTION** by Winkler, supported by Parel, that the Planning Commission **recommends approval**, to the Commerce Township Board of Trustees, of Item PZ20-04, Commerce Township Zoning Ordinance Text Amendment. An amendment to the Commerce Township Zoning Ordinance, to amend Article 33, General Provisions, Section 33.02 Fences, to amend the language for fences surrounding waterfront swimming pools; and Section 33.03 Swimming Pools, Spas, and Hot Tubs to amend the language and to add criteria regarding required fences.

Move to recommend the Commerce Township Board approve PZ# 20-04, an amendment to Article 33 of the Commerce Township Zoning Ordinance, including Sections 33.02 (Fences) and Section 33.03 (Swimming Pools, Spas, and Hot Tubs). The Planning Commission's recommendation is based on a finding that the proposed amendment provides clarity and reasonable standards to the requirements for fences around swimming pools when those pools are on the waterside of a waterfront residential property, while also protecting public safety and the viewsheds of neighboring waterfront property owners.

**ROLL CALL VOTE**

**AYES:** Winkler, Parel, McKeever, Rebeck, Karim, Weber, Haber  
**NAYS:** None

**MOTION CARRIED UNANIMOUSLY**

**I. NEW BUSINESS**

**ITEM 11: COMMERCE LAKE MARKET – CONCEPTUAL REVIEW**

Mr. Saad Bakko is requesting a conceptual review of a proposed addition to the rear of the existing retail store located at 1740 Glengary Road.

Dave Campbell – This is an existing party store at 1740 Glengary, near the corner of Glengary and Benstein, east of Benstein Road. The current owner is interested in doing expansion of the store, up to 3,000 square feet on the north side of his existing building, which is the rear of that building. The property has been there for some time. I think Paula determined it was built in 1973.

For a number of reasons, it's a nonconforming property in the sense that it doesn't meet the Township standards of today. If someone were to build a retail store today, our requirements would be different with respect to landscaping, building design and architecture, et cetera.

When you have a nonconforming site such as this, and the owner wants to do an improvement or expansion, the role of the Planning Commission for Article 39 of our

Zoning Ordinance is to work with the owner and make an effort to bring the site into reasonable compliance with the current standards of the Zoning Ordinance. That reasonable compliance is meant to be in proportion to the scale of the improvement that they're looking to make. In this case, the owner is looking to make a 3,000 square foot addition to their about 3,000 square foot building. It would be up to the Planning Commission to make a determination of what would be reasonable site improvements to require in proportion to the expansion that the owner is looking for. The Planning Department has had several conversations with Mr. Bakko. I know he's joining us this evening. I'm hoping the Planning Commission can have discussion with Mr. Bakko, on a conceptual level.

Dave Campbell brought up an aerial photo of the store on the screen and reviewed the site and proposal with the Planning Commission. He noted that the frontage is the parking lot and access aisle. There is not a huge amount of space available to do improvements such as new landscaping. It may not be much value to require a sidewalk. A dumpster enclosure could be required. There may be an area for landscaping improvement.

Dave also noted that Mr. Bakko's store is an off-premises alcohol sales outlet (OPASO). Because he is looking to expand, he would require Special Land Use approval. The request was put on the agenda on short notice, and therefore, the Planning Department has not yet ensured that all of the limitations required for such an expansion can be met for this location.

Mr. Bakko – I would like to thank everyone for letting me in on short notice. I've been here 5 years and now my son joined me so he can help. Thank God for everything. We're doing good. The neighborhood is very beautiful, and everybody is nice and happy with what we did in the last 5 years.

We did improve on everything, and I would like to do way better than what I did in the last 5 years if you guys give me a chance to expand. I'll have more storage room, more cooler space, and maybe one more aisle in the middle so that I can have bigger variety for my customers. I have a request list, there's always something new, or something people want. They don't want to drive too far, for example to Walmart, Kroger or Meijer. They like to come here because we give them good service. We take care of everything.

We keep the place clean, organized and neat. As Dave said about the landscaping up front, I'm going to dress it up a little bit nicer than what it is right now. I'm going to do the best I can because this is my bread and butter and I'm making a living out of it. I'm very happy here, and my customers are very happy with me. I thank everyone.

Chairperson Haber – Thank you, Mr. Bakko and we're going to give you some ideas.

Mr. Bakko – That's fine with me. One more thing; I'm going to tap to the city water. This way, I can have fresh water, just in case in the future maybe I will bring in some sandwiches or a deli counter. At least 5-10 people ask me for sandwiches every single day.

**Commission Comments:**

McKeever – Would the expansion of the building require additional parking?

Dave Campbell – We have not looked at that specifically, whether the square footage ratio would warrant more parking. I think it would be difficult to do, just based upon the layout of the existing store. I don't think there's a lot of space to add additional parking along the backside of the store. We could certainly look at that. We did discuss that with Mr. Bakko, and Mr. Bakko, correct me if I'm wrong. You're there on a day-to-day basis; the impression you had was that the parking you have suits your customers' needs?

Mr. Bakko – Yes it does. Maybe in the future when I expand more. I know I'll be okay, but maybe I will need a couple more parking spaces. I won't lie to you and say it's perfect, no it's not. I would love to have more parking space, but the way everything has been laid out ... Maybe in the future, I would be able to buy the property next door to me. There's a rumor that it could be for sale within a couple months. I would love to purchase that and make it look good, pave it and have more parking space. It would look nice, because now it's an eyesore. It used to be a gas station and a mechanic's shop. Honestly, I don't mind buying it and tearing it down to make the area look good.

Dave Campbell – Yeah, I don't think anybody would disagree that the property next door to you could use a better look to it. Mr. McKeever, another thing that might be relevant, it may depend on how he's going to use the expansion space; whether it's going to be more usable space for customer foot traffic, or whether it's for coolers and storage. That could impact the ratio of what sort of parking he'd be required to put in.

McKeever – Okay.

Chairperson Haber – There's a lot of work to do on this yet, obviously. Let's just give him some communications of how we feel and he can decide if he wants to proceed. Bill, is there anything else?

McKeever – Only the landscaping, it would absolutely have to be addressed.

Weber – I live close to the Commerce Lake Market and I'm a customer of Mr. Bakko's probably a couple of times a month. It had some lipstick done or minor enhancement to the exterior. There's quite a bit more that could and should be done. I also have a concern on the parking. It would be very difficult for people to drive around to the back. It is a very narrow alley way between the fence to the property to his west and to get to the back.

Also have a little bit of concern as to the way this will encroach into residential. To the northwest of Mr. Bakko's property is a very nicely maintained property, and this will definitely encroach back there as there are probably at least two mature trees that would have to be taken down in order to expand 30 feet to the north. Those are some of my initial comments and thoughts.

Vice Chairperson Parel – I agree with my fellow Commissioners. The parking lot is an issue. I think their landscaping could always be beefed up. I'm not certain of where you could do it.

Dave, on the aerial, can you show the dumpster. I thought it was shown on the east side of the dumpster.

Dave Campbell – Mr. Bakko, is that your dumpster?

Mr. Bakko – Yes.

Vice Chairperson Parel – Okay, when I pull up Google street view, it shows a dumpster on the left or west side of the property as well.

Chairperson Haber – There's another one there Brian, from the gas station.

Mr. Bakko – There's one for that big lot, and my dumpster used to be on this side, but I moved it on the other side for safety purposes.

Vice Chairperson Parel – No problem. Dave, I think you brought that up. It's definitely a topic of concern for me. There are too many dumpsters visible from the road.

David, the petitioner has a pylon on the street view, and it looks like there's some temporary signage affixed to it. I don't know that it's allowed under our signage ordinance, but it's something advertising \$7.99 Coca Cola or beer. Obviously, something I don't think we want to see.

Mr. Bakko, you mentioned adding storage, another aisle and other things. Are you planning on adding any alcohol?

Mr. Bakko – I've got enough alcohol. I want to add more groceries for my customers. And maybe more alcohol because there's always some new item and we do need space. It will combine everything; more groceries, more alcohol, more cooler space and back room space. Dave said 3,000 square foot – it's going to be 2,100 because we're going to go 10'x70'; 10'x70' will be storage room; 10'x70' is cooler area, and in the middle I'll add maybe another 10' to my selling area.

Vice Chairperson Parel – Okay, I appreciate that. Thank you. I don't know how we validate this, but I would just like to confirm that we're not taking 2,100 or 3,000 square feet and just filling it with alcohol.

Mr. Bakko – No, oh my God! I would need \$2 million that I don't have.

Dave Campbell – It might be a relevant point though. When we're talking about expanding an OPASO. This is a conversation I might have to have with the Township Attorney. It may be a question of whether they're expanding the building for the purposes of adding to their alcohol inventory, or for the purpose of groceries or a sandwich counter. That might be relevant to our discussion of whether he's allowed to expand the OPASO component of his business.

Vice Chairperson Parel – It sounds like you’ve got more work to do, David, and we’ll let you do that. I know this came in kind of late. You also made a comment about that it may not be a possibility due to the building’s close proximity to the residential zoning district. I know you’ve got to do some research on that.

Dave Campbell – We do. Mr. Bakko was excited to get some preliminary feedback, but we all agree there is more homework that needs to be done.

Rebeck – I wanted to ask Dave, is there anything significant about the nonconforming use that you think should be mentioned. The way that it’s built right now, is there anything that could be addressed that we would like to see that you can think of?

Dave Campbell – A lot of times, the nonconforming nature can almost work to the applicant’s advantage because it becomes something of a trade-off. He wants approval of an expansion, and this is an opportunity for us as a Township to get reasonable improvements as part of that approval. What we don't want is for no one to ever make an improvement to their property because to do so would be so overly burdensome. We want to be reasonable and find a good middle ground.

Some of the things that have come up that I think are reasonable are more of a facelift to the public side of the building on Glengary, some additional landscaping where there's room to do it, which is limited, and the dumpster enclosure. Maybe there's some operational improvements that can be made. Maybe we could look at the parking lot to see if traffic could flow better through there.

Rebeck – Okay, thanks. Mr. Bakko, the only things that I really have to add, and being a relatively new member of the Commission, I think that it will go a long way if you bring something that looks nice and makes the neighborhood better, and also address the stuff that we brought up tonight, which is parking. Give us a good idea of what you plan on doing with the extra space so we have something to go on.

Karim – I've been looking at the site plan and it looks like on the left side, there is a possibility of having the driveway there to the backside of the building, which will maybe allow the owner to move his car, or the delivery car there, to create more parking at the front. There's another possibility on the right side to have the dumpster between the building and the neighbors, and have some sort of a gate. There's a lot of possibilities for improvement. I'm talking as an architect and I'm imagining it.

Dave Campbell – Great minds think alike. Paula was thinking maybe if there were to be parking in the back, maybe it could be limited to employee parking, just because it is a tight area so it would be more suitable for employee parking rather than public.

Winkler – I think all the things that David Campbell has mentioned in his report are on the table, with regard to improving the site landscaping, the dumpster enclosure, the parking lot striping, and upgrading the building’s façade. I also agree with Mr. Karim and Chelsea about the fact that this is a chance for the owner to improve the look of the building, and it’s our chance to have him improve the look of the building as far as the

site plan approval. I also suggested he possibly look at strategically sizing his addition so that possibly some of the trees to the north of the building could be maintained.

Chairperson Haber – Mr. Bakko, in a perfect world I'd want to see the building taken down and redone. We don't live in a perfect world, however. It would be nice if you could acquire the property next door because that is an eyesore and that would really solve a lot of your problems.

Mr. Bakko – Yes.

Chairperson Haber – Hopefully one day, that property will be available and you can do something with that. It has been a challenging property ever since I've been on the Planning Commission. That put aside, there's a lot of work to do here. We're going to ask you a lot of things. We're going to ask you beautify the front. I hope you picked up some pointers here of what the Planning Commission would like to see. We'll look forward to you moving to the next step if you choose to do so.

Mr. Bakko – I would love to. I would like to have a list of things that need to be done and I'll be more than happy to do the landscaping, the gate for the garbage container. I'm going to cut the trees in the back, once we get things going. Yeah, I can add parking space in the back and we can park back there. That would be no problem.

Chairperson Haber – Your best bet is to work with our very talented Planning Director. He knows what we want and he will guide you through this process.

Mr. Bakko – Thank you.

**J: OTHER MATTERS TO COME BEFORE THE COMMISSION:**

Weber – Dave, are you going to bring up the subject of the privacy fence at the Benstein cemetery?

Dave Campbell – I am now.

Weber – Excellent. The Benstein Grille has pretty much completed the parking lot and their landscaping. They did a great job with the landscaping and I think they went a little above what was originally asked of them.

Hindsight being 20/20, we could have done things a lot better. I could have done things a lot smarter in the process, and most importantly other than a lack of communication, we had them put the new bike path and walking path between the cemetery property and their landscaping. In a perfect world, we would have had the bike path next to the parking lot and the 8' or so of landscaping between that and the cemetery.

Where we are now, I think there's an opportunity to have a discussion on whether the Township should put some level, I'll guess maybe 75-100 yards worth of privacy fence from the back of Benstein Grille's property to a point where the bike path makes a turn.

Dave Campbell pulled up the aerial on the screen of the Benstein Grille site and gave an overview of the changes to the parking lot and pathway adjacent to the cemetery.

The pathway does feel too close to the gravesites and residents have contacted the Township with their concerns in this regard.

Therefore, because the Township sold the acre of land to the Benstein Grill, staff is looking at making improvements in this area. The revenue from the sale of that land was intended to go back into cemetery improvements, which could include a combination of a privacy fence and landscaping for an additional buffer between the gravesites and the pathway.

Discussion continued regarding the Benstein Grill site in relation to the cemetery, types of additional landscaping that might be used, complaints that were filed with the Township due to the shock factor when all that vegetation was removed, and resolutions to the issue. The trees that were removed were of questionable health and not worth preserving.

### **K: PLANNING DIRECTOR'S REPORT**

Dave Campbell discussed the following with the Commissioners:

- **NEXT REGULAR MEETING DATE: MONDAY, SEPTEMBER 14, 2020 @ 7PM - potentially electronic-only**
- We continue to have conversations about the Bay Pointe Golf Course. There are still ongoing negotiations with the potential buyer and the owner, but the latest proposal is to do something much less dense than anything we've heard about before. Instead, they would have some large estate lots encompassing the old golf course. This is a significant property based upon location and the traffic patterns along Union Lake Road.

Chairperson Haber – We've been through this before. There are a couple of issues that were going on with the RCOC about possibly putting a roundabout in there. Going back a number of years, they had an ex-employee who claimed they had buried some chemicals near the work shed and that needs to be looked into at some point. In addition, the site is very wet there. Sometimes golf carts get stuck in the mud. It's a challenging site and they're going to have to do their due diligence to find out if they have to cart in truckloads of dirt.

Dave Campbell – The developer looking at it is well-known and sophisticated. The idea is that they would do a number of big estate lots so that people can build big homes with frontage on the lake. They would pick the high and dry portions of their lot for building, in an effort to avoid things you're describing like bringing in tons of fill.

- Township Board continues to have conversations with the prospective buyers of the Sleeth Road gravel pit; the westernmost of the three gravel pits. They are tentatively scheduled to be back in front of the Township Board at the meeting on August 18<sup>th</sup> with more detail on their prospective Brownfield plan. If the Board is agreeable, then at some point their plan will come in front of the Planning Commission, most likely as a PUD. Before they get to that point, they need to get more traction with the Township Board, Oakland County and the State of Michigan.

- We're overdue to have a joint meeting with our Township Board. I said to the Trustees, let's get our two new Planning Commission members onboard and have their first meeting before we hold a joint meeting. I just want to remind everyone that's something we want to do.
- We had a conversation with some prospective buyers of the Williams International site, on the south side of Maple Road, west of M-5 on a very large piece of property. Williams is slowly migrating off of that property into their new facility in Pontiac. In the meantime, they're bringing in prospective buyers/developers for that property.
- A lot of folks have asked me for an update on the election results, particularly for the Township Supervisor. Last I knew, we did not have the results yet. Write-in ballots all have to go to Oakland County to be tabulated. The deadline is two weeks from the election which is August 18<sup>th</sup>. Paula, I think what we heard is Oakland County is not likely to release those results until the 18<sup>th</sup>?

Paula Lankford – I was told that they can't certify it until the 18<sup>th</sup>. Until it's certified, we won't know officially or unofficially.

Dave Campbell – Paula's sister is the Township Clerk, so she gets the inside information.

**L: ADJOURNMENT**

**MOTION** by Parel, supported by Karim, to adjourn the meeting at 8:39pm.

**ROLL CALL VOTE**

**AYES:** Parel, Karim, Haber, Winkler, Rebeck, McKeever, Weber

**NAYS:** None

**MOTION CARRIED UNANIMOUSLY**

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Brian Winkler, Secretary