

**CITY OF BRIGHTON
ZONING BOARD OF APPEALS
MINUTES
March 14, 2013**

1. Call to Order

Chairperson Rahilly called the meeting to order at 7:30 p.m. and the following members were present:

2. Roll Call

Gino Conedera – Present
Russ Gottschalk – Present
Patrick Rahilly – Present
Doug Angst – Present
Chad Cooper - Present
Dave Senak – Absent
David McLane - Present
Amy Cyphert
Lauri French

Motion by Board Member Cooper, seconded by Conedera, to excuse Board member Senak from tonight's meeting. Motion carried 6-0-1.

An audience of seven was also present.

3. Approval of the November 18, 2012 Meeting Minutes

Motion by Board Member Cooper, seconded by Gottschalk, to approve the meeting minutes of November 18, 2012 as presented. Motion carried 5-0-1-1, with Board member McLane abstaining and one absence.

4. Approval of the February 14, 2013 Meeting Minutes

Motion by Board Member Cooper, seconded by Angst, to approve the meeting minutes of February 14, 2013 as presented. Motion carried 4-0-1-2, with Board members Conedera and Gottschalk abstaining and one absence.

5. Approval of the March 14, 2013 Meeting Agenda

Board Member Cooper noted that Item 5 on the agenda should read "March 14, 2013" and, as mentioned in Blue Sky, Item 6 should be moved after New Business as Item 8a. Motion by Board Member Cooper, seconded by Conedera, to approve the March 14, 2013 agenda as amended. Motion carried 6-0-1.

New Business

- 7. Joshua King – occupant of 128 Beaver Street (18-30-303-025)** is requesting a variance to allow a 6-foot fence 3 to 5 feet from the eastern property line, which abuts a public street right of way. **Section 98-38** states in the case of a corner lot, no fence more than 36 inches high shall be constructed that extends beyond the foremost position of the building on the site or within 25 feet of the public street right-of-way line, and it shall be ornamental in design. A variance of 3 feet is being requested in order to allow a 6-foot fence 3 to 5 feet from the public street right-of-way.

Ms. Cyphert reviewed the applicant's request and noted that the homeowner is in the audience to answer any questions the Board may have. Board Member Conedera noted that he would be abstaining from the discussion and vote on this item because the applicant is a customer of his. Joshua King, 128 Beaver St., advised the board that he was not familiar with the City's requirements when he put up the fence without

obtaining a permit. He put the fence up to screen his property from the adjacent commercial property, keep people from walking through his yard, and distributed photographs for the board to review. He also advised that the fence was for his children's safety, as he has learned there are registered sex offenders living in the area, and he provided that information to the board to review.

Bill Lenaghan, Code Enforcement Officer, City of Brighton, advised the board that City staff has been working with the homeowner to bring him into compliance for almost two years and he has done everything the City has requested him to do including submitting a permit and survey. Mr. Lenaghan stated that in his opinion, the homeowner should be granted the variance for his fence, even though he did not originally follow procedures to install it.

In response to a board member's question, Ms. Cyphert advised that granting variance request for the fence falls under the ordinance requirements of practical difficulty, hardship and unusual conditions. Chairperson Rahilly closed the regular meeting at 7:40 p.m. and opened the public hearing. Wayne Semenok, 205 Beaver (owner of rental house), questioned whether the fence was going to be moved closer to the street, which could cause visibility problems for drivers. Chairperson Rahilly confirmed that the fence was not going to be moved closer to the street.

Chairperson Rahilly noted that four letters (attached) in support of the applicant's request for variance had been received and he read them into the record for the public hearing. The neighbors have no problem with the fence but did cite concerns about vehicular traffic not stopping at the stop sign and speeding. Hearing no further comments, Chairperson Rahilly closed the public hearing and reopened the regular meeting.

There was discussion about the 3' fence height in the ordinance and whether the ZBA would have granted a variance if the owner had followed City procedures and come before the board in the first place. Mr. Gottschalk noted that in some instances a higher fence would be a visibility concern, but that it is not the case here. Mr. Cooper stated that the homeowner's intentions, i.e., to protect his family, were sound but questioned whether this would be a hardship case if he didn't check out the neighborhood before moving in. Chairperson Rahilly stated that the applicant has worked with City staff and shown a willingness to work in good faith to resolve any issues. He also noted there are many places in the City with fences in side yards that may or may not have been done properly. The applicant, Mr. King, noted that before the fence was installed, people would cut through his backyard at night, at one point sitting on his kids' swing set, and that his son found a syringe in the back yard. There was further discussion about the property being a corner lot, and Ms. Cyphert noted that it abuts a commercial zone to the west. In response to a question from Mr. McLane regarding whether there is a screening requirement in commercial zones, Chairperson Rahilly noted there are requirements, that this was recognized as a "transition" neighborhood by Planning Commission years ago and that the commercial property's screening is an enforcement issue for the Code Enforcement Officer.

Motion by Board Member Cooper, supported by Gottschalk, to approve the variance of 3 feet in height to allow a 6-foot fence within 25 feet of the public street right-of-way line due to the practical difficulty of his property abutting commercial property with unusual hours, noise issues, safety and privacy intrusions and traffic safety issues. Ms. Cyphert reminded the board members that the ordinance requires a unanimous vote. Chairperson Rahilly requested a roll call vote and the results are as follows:

Mr. McLane – yes; Mr. Cooper – yes; Mr. Rahilly – yes; Mr. Conedera – abstain; Mr. Senak – absent; Mr. Angst – yes; Mr. Gottschalk – yes. Motion carried 5-0-1-1.

8. **Allied Signs – on behalf of Michaels at 8389 W. Grand River (18-19-300-024)** is proposing a 241.74 square foot wall sign at the principal entrance of a tenant that is occupying 116 feet of building frontage. Section 66-94 (4) (b) states each occupant, tenant or user of space whose principal entrance is such that a public entrance is provided directly from the outside into the store shall be permitted one wall sign not exceeding 32 square feet in area at that primary entrance or within the plane of the wall where the public entrance is located. Businesses which have in excess of 50 lineal feet of building frontage on a public street, alleyway or parking area, to which there is a public or primary entrance, the wall sign area may be increased by one square foot for each one lineal foot of frontage between 50 and 150 feet not to exceed a total of 132 square feet. In addition, if a wall of

the building which does not have a public entranceway or is a secondary entrance, is adjacent to a public right-of-way, one wall sign not exceeding 50 percent of the total surface area of the above primary wall sign shall be permitted. A variance of 143.74 square feet is being requested.

The applicant is proposing a wall sign that has a vertical dimension of 9.4 feet at the principal entrance on a building. Section 66-94 (4) (g) states that the vertical dimension of a wall sign shall not be in excess of six feet. A variance of 3.4 feet is being requested.

The applicant is also proposing an 80.66 square foot wall sign on the rear of the building that abuts a public right-of-way. Section 66-94 (4) (b) states each occupant, tenant or user of space whose principal entrance is such that a public entrance is provided directly from the outside into the store shall be permitted one wall sign not exceeding 32 square feet in area at that primary entrance or within the plane of the wall where the public entrance is located. Businesses which have in excess of 50 lineal feet of building frontage on a public street, alleyway or parking area, to which there is a public or primary entrance, the wall sign area may be increased by one square foot for each one lineal foot of frontage between 50 and 150 feet not to exceed a total of 132 square feet. In addition, if a wall of the building which does not have a public entranceway or is a secondary entrance, is adjacent to a public right-of-way, one wall sign not exceeding 50 percent of the total surface area of the above primary wall sign shall be permitted. A variance of 31.66 square feet is being requested.

Ms. Cyphert reviewed the applicant's variance requests, two for the front sign and one for the rear. She noted that the applicant and property owner are both present. Ashley Israel, Brighton Mall Associates, 5640 W. Maple, Ste. 101, W. Bloomfield, MI, spoke on behalf of the tenant, Michaels, as the property's landlord. He noted that Michaels' sign is also their logo and cannot be changed. The motto is also part of that logo which is why the variance is required. He noted that the Michaels signage is smaller than the Bed Bath & Beyond signage; Michaels is not as large a store as Bed Bath & Beyond but is still substantial. Mr. Israel also stated that Brighton Mall is a unique property and there is no residential or commercial impact if the sign variance requests are approved. The store has a large parapet, which the proposed sign fits nicely, and the sign is proportioned to the Bed Bath & Beyond sign. Maximizing the signage benefits customers as well as people driving by on Grand River. He also noted the requested rear signage is in proportion to other signs on the back side of the mall off I-96. Mr. Cooper noted that Mr. Israel has improved the value of this location. There was some discussion about whether the sign utilizes block letters, and Ms. Cyphert indicated the sign was made up of individual letters. Patrick Stieber, Allied Signs, 33650 Giftos, Clinton Township, MI 48035, noted in a response to a question about why the sign had to be that large, that it's because the store is set back off Grand River, the angle of the building and the traffic on Grand River.

Chairperson Rahilly closed the regular meeting at 8:12 p.m. and opened the public hearing. Hearing no response, he closed the public hearing and re-opened the regular meeting.

Motion by Mr. Cooper, supported by McLane, to approve the requested variance at 8389 W. Grand River under Section 66-94 (4)(b) and (4)(g) of 143.74 square feet for a 241.74 square foot wall sign at the principal entrance of a tenant that is occupying 116 feet of building frontage and to approve the requested variance under Section 66-94 (4)(g) of 3.4 feet for the wall sign that has a vertical dimension of 9.4 feet at the principal entrance on a building. Approval of both requested variances meet the "Grounds for variance" in Section 66-63, Criteria for Decision, (d)(1-4), due to the unique layout of the building and property, the size of sign required to see the business, the granting of the variance would not be detrimental to property owners in the vicinity, the unusual conditions do not apply to other properties in the City, and the granting of the variances will not be contrary to the general objective of the chapter. A roll call vote was taken as follows:

Mr. Cooper – yes; Mr. Senak – absent; Mr. Gottschalk – yes; Mr. Angst – yes; Mr. Rahilly – yes; Mr. Conedera – yes; Mr. McLane – yes. Motion carried 6-0-1.

Motion by Mr. Conedera, supported by Gottschalk, to approve the requested variance at 8389 W. Grand River under Section 66-94 (4)(b) and (4)(g) of 31.66 square feet for an 80.66 square foot wall sign on the rear of the building that abuts a public right of way according to Section 66-63 (e)(1) and (e)(2) as the sign and entire site are of particularly good design and in particularly good taste. A roll call vote was taken as follows:

Mr. Angst – yes; Mr. McLane – yes; Mr. Conedera – yes; Mr. Cooper – no; Mr. Gottschalk – yes; Mr. Senak – absent; Mr. Rahilly – yes. Motion carried 5-1-1.

Old Business

8a. Election of Chairperson and Vice Chairperson

Ms. Cyphert reminded the board members that Board Member Cooper cannot serve as ZBA Chairperson since he is the liaison from City Council, and the Chairperson is not allowed to make motions.

Motion by Mr. Cooper, supported by Gottschalk, to nominate Mr. Angst for Chairperson and Mr. Conedera for Vice Chairperson. Motion carried 6-0-1.

9. Staff Updates – Ms. Cyphert advised that there is nothing for next month's agenda as yet and she will advise the board members if there will or will not be a meeting in April. She also advised that she will be taking the handling of temporary structures (e.g., tents for firework sales) to Planning Commission on March 18. This was due to a change in fireworks legislation last year. There are two options that are being considered: 1) the ZBA can approve temporary structures via a public hearing and can attach conditions (i.e., 90 day limit), or 2) amend temporary land use structures ordinance which would require City Council approval. She brought this up to make sure there would be no issues if the ZBA were to take this on. ZBA powers would have to be amended. The consensus was there would be no issues if the ZBA took this on as long as guidelines exist.

10. Call to the Public

Chairperson Rahilly made a Call to the Public at 8:40 p.m. Hearing no response, call to the public was closed.

11. Adjournment

Motion by Board Member Conedera, seconded by McLane, to adjourn the meeting at 8:40 p.m. Motion carried 6-0-1.

Respectfully submitted,

Lauri French, Secretary
March 18, 2013