

**CITY OF BRIGHTON  
ZONING BOARD OF APPEALS  
MINUTES  
June 14, 2012**

**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 - Absent  
Dave Senak – Absent  
David McLane - Present  
Amy Cyphert  
Lauri French  
Brad Maynes, City Attorney's office

An audience of approximately thirty was also present. Chairperson Rahilly welcomed Doug Angst as the newest ZBA member.

Motion by Board Member Conedera, seconded by McLane, to excuse Board Members Cooper and Senak from tonight's meeting. The motion passed 5-0-2.

**3. Approval of the May 10, 2012 Meeting Minutes**

As noted in Blue Sky, the May 10, 2012 cannot be approved at tonight's meeting since there is not a quorum of those present at the May 10 meeting. Motion by Board Member Conedera, seconded by Gottschalk, to table the May 10, 2012 minutes until the July 12, 2012 meeting. The motion passed 5-0-2.

**New Business**

**4. Dionysus Theatre and Performing Art Academy, LLC, 301 Appian Way**, is appealing the Planning & Zoning Administrative Official's interpretation that their proposed use is not permitted under Section 98-597. The applicant seeks a determination that their proposed use is not prohibited. Sec. 2-199. The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this Act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this Act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance. The applicant is requesting an interpretation of Section 98-597 from the Zoning Board of Appeals to permit their proposed use.

The applicant is requesting the Zoning Board of Appeals permit variation or modification of the required location of off-street parking facilities and in the amount of off-street parking facilities for their proposed use. The applicant is proposing to utilize off-site parking spaces in adjoining parking lots as spaces that count toward the total of its required parking (66 off-site spaces) and a

variance from providing 4 parking spaces. **Section 98-81** states any building, structure or use of land that is constructed, established or enlarged, or which use changes, shall provide on-site, well-designed, landscaped and illuminated vehicle parking and loading areas that meet the following minimum provisions. **Section 98-85 Parking Space Requirements** states that a theatre use requires one parking space for each three seats plus one for each two employees on the largest work shift, a manufacturing, utility, research, and development facility requires one parking space for each employee on the largest work shift plus one for each 200 square feet of office reception area and general business office uses require one parking space per 200 square feet of GFA. A variance to modify the required location of off-street parking facilities and a variance of 4 parking spaces is being requested.

The applicant is requesting the Zoning Board of Appeals permit variation or modification in the amount of off-street parking facilities for their proposed use. The application of the shared parking calculations results in a requirement of 106 parking spaces for the site. The site would have 77 parking spaces after required barrier free changes are made. **Section 98-85 Parking Space Requirements** states that a theatre use requires one parking space for each three seats plus one for each two employees on the largest work shift, a manufacturing, utility, research, and development facility requires one parking space for each employee on the largest work shift plus one for each 200 square feet of office reception area and general business office uses require one parking space per 200 square feet of GFA. A variance of 29 parking spaces is being requested subject to the condition that Planning Commission and City Council approve the shared parking calculations through the site plan approval process.

Ms. Cyphert noted that the applicant is requesting an interpretation of Section 98-597 from the Zoning Board of Appeals to permit their proposed use. Also the applicant was requesting the Zoning Board of Appeals permit the variation or modification of the required location of off-street parking facilities and in the amount of off-street parking facilities for their proposed use. She stated that the applicant is present if the board members have any questions.

Leigh Hansmann, attorney for the applicant, reviewed her interpretation of the ordinance (included in tonight's packet). She noted that the LIP use is not specific and that the type of use her client is proposing is not the type of use that the LIP prohibits in sub-section (17) of the "exception list" of Section 98-597. She further argued that the proposed use is not prohibited because it is not engaged on commercial use as defined by the ordinance. She noted that the proposed use is unique from the surrounding businesses because its use is primarily in the evening. She also referred to the City of Brighton's 2012-13 Goals which would seem to support her client's proposed theater.

Chairperson Rahilly asked if anyone in the audience would also be interested in speaking. He did note that there is a large audience present and that in the interest of time, it would be appreciated if people could keep their comments brief. The following comments were heard:

- Paul R., 616 Rickett, Brighton, commented that he had lived in Brighton for about a year and thought the theater would have positive benefits to the community.
- Shelley Walker, 4991 Canyon Oaks Dr., Brighton Township, said she thinks the theater would have a positive effect on young people. Everyone is always talking about attracting and keeping young people in the area and maybe this would keep them from leaving. She was involved in the Brighton High School musical and said there was a 17% increase in restaurant business on the weekends when the musical was at the high school.
- Renee Pesci-Smith, 2218 Lone Tree Rd., Milford, read references from economic impact studies on the impact of the arts on communities. She said the theater would strengthen the community and residential areas.
- Shannon Egenoff, 1171 S. Maxfield Ct., Brighton Township, noted that the location in Brighton would be ideal and that it is more convenient to drive to Brighton instead of to Lansing or Detroit to go to the theater.

- Sonja Marquis, 7794 Wildwings Ct., Hamburg Township, said she was speaking as a person who had done some acting and that there is nothing in the local area within a close distance that would compare with the theater. She also stated that shopping and dining would be enhanced by the presence of a theater in the area.
- Stacey Campbell, 6588 White Pines Dr., Genoa Township, stated that she was hoping to get a job with the theater when it opened in Brighton.
- Carolyn Hayes, 3278 Alpine St., Ann Arbor, stated that she is a theater critic who drives a lot for her job, and she believes people would drive quite a distance to a theater in Brighton.
- Eric Marquis, 7794 Wildwings Ct., Hamburg Township, stated that he has attended shows since he was a child with his family. He believes the theater would build a sense of community.
- Samantha Poji, 10746 Winthrop, Hamburg Township, said that she is a student going into musical theater as a career and a local theater would be ideal because it would be a shorter drive.
- Shelley Walker, 4991 Canyon Oaks Dr., Brighton Township, said she participated in theater in Howell but that it is expensive to drive 30 minutes each way. She believes the theater would be good for community involvement and noted that there is not a lot of entertainment in Brighton for teenagers.
- Merrie Mulka, 4688 Brookwood Meadows, Genoa Township, said she has heard it's difficult for businesses to come to Brighton. She hopes that the ZBA thinks creatively to bring the theater to Brighton and makes an exception.
- Frank Del Vero, 4223 Crooked Lake, Genoa Township, noted that he is a former prosecuting attorney and judge in Livingston County. He supports the theater and stated there is no law to which an exception can't be made.
- Leigh Hansmann again stated that the theater is not the exception that triggers the rule. The definition of "commercial" is not clear in the ordinance in reference to the LIP district. The business would be operating in the evening and won't conflict with other existing businesses and, in her opinion, the use is permitted.

Hearing no further comments, Chairperson Rahilly asked the board members for comments and opinions prior to making a decision on the applicant's appeal. Mr. McLane asked if there was a definition for "theater" in the ordinance in reference to footnote 3 in Ms. Hansmann's Ordinance Interpretation paper. Ms. Cyphert responded that there is not. Mr. Angst, who noted that he has no agenda and is new to the board, agrees that a theater would be valuable to the community but noted that the question is whether the theater should be located at 301 Appian Way versus another location where it would be a better fit.

Mr. Conedera asked Ms. Hansmann whether her client had done their due diligence before choosing 301 Appian Way, including whether the applicant had read the definitions and ordinance for the LIP zoning district. Ms. Hansmann answered in the affirmative, that they had read the ordinance, but their interpretation was that the theater did not fall under the "commercial" definition since there is no definition for "theater" and it doesn't fall under "entertainment or amusement".

There was a brief discussion about other prior businesses located at 301 Appian Way, with Chairperson Rahilly noting that since the businesses in some cases were not approved by the City, it wasn't relevant. He noted that theater is defined in areas where it is allowed and that the origin of the LIP district was not intended for this kind of use. Mr. Angst stated we may be setting a precedent if we allow the theater in the LIP district and that the parking calculation shows that it was not set up for that type of use.

Mr. McLane questioned whether allowing a theater at 301 Appian Way would be a noise issue for the neighborhood. Ms. Hansmann replied that the location is at the non-residential end of the building and noise should not be an issue. Rehearsals would be in the early evening with performances at night and some matinees during the day. Steve and Rick DeBruyne commented on the concrete block construction of the building that addresses the noise question.

Rick DeBruyne, 5617 Crooked Lake, Genoa Township, was recognized by Chairperson Rahilly. He

stated he works at Matrix Services on Appian Way who recently performed grinding operations on a second shift and there were no complaints.

Mr. Conedera asked a question regarding whether the theater would use lighting such as spotlights to draw people to the theater. Ms. Hansmann stated there would be no lighting or outdoor marquees. Mr. Conedera asked again that if the applicant had done their due diligence, why did they pick this location if they had read the ordinance. Ms. Hansmann replied that they did explore other options but found that this building is ideal for theater use. Mr. Conedera asked if the applicant had signed a lease for the building yet; Ms. Hansmann noted they are still negotiating the lease with the building owner. Mr. Conedera stated that there had been several publicity stories in local media stating that the theater is "open for business", and he feels like this is being shoved down our throats.

Steve DeBruyne, 209 Pearl St., Pinckney, noted that the latest WHMI article written by John King had been corrected at his request.

There was additional discussion about setting a precedent if this use was allowed in the LIP district and the history of the LIP zoning district. Brad Maynes from the City attorney's office noted that it is the ZBA's job to interpret the language in the ordinance. Mr. Angst stated the LIP zoning ordinance language is very clear and specific. Chairperson Rahilly questioned whether we want to include "theater" as an allowable use in a commercial zone. Mr. Conedera stated that "commercial" defines entertainment and a theater is entertainment in his opinion.

Motion by Board Member Conedera, seconded by Gottschalk, to affirm Staff's decision that the proposed use for a theater at 301 Appian Way is not permitted since the ordinance is explicit where the definition of commercial includes entertainment and recreation, and commercial is not an accepted use in the LIP zoning district. A roll call vote was taken as follows:

Mr. McLane – No	Mr. Senak - Absent
Mr. Cooper – Absent	Mr. Angst - Yes
Mr. Rahilly – No	Mr. Gottschalk - Yes
Mr. Conedera – Yes	

The motion passed 3-2 with 3 yes votes, 2 no votes and 2 absent.

Motion by Board Member Conedera, seconded by Angst, that the request for a parking variance by the applicant is moot with the above decision. The motion passed 5-0-2.

Chairperson Rahilly advised Ms. Cyphert that he is concerned about the lack of control over use of properties in the City. He understands that property owners have had a hard time renting space, but that area seems to have some tenants that snuck in under the City's radar. He asked what measures are in place to prevent this from happening in the future. Ms. Cyphert explained that there have been several changes that have been put in place since she began working in the Planning & Zoning Department, including requiring re-occupancy permits even if there is no construction done, and having the Fire Department verify what equipment is available (fire extinguishers, etc.) prior to a Certificate of Occupancy being issued. She holds "Red Flag" meetings with potential businesses looking to move into the City, although she was not approached by the applicant until after the theater had already been announced in the paper; she stated she was not sure what was done prior to 2005 to control businesses moving in and out and to ensure they were a permitted use in a particular location.

## **5. Staff Updates**

Ms. Cyphert advised that there will be a meeting in July; she has received a sign variance request. She also noted that she had talked to Dave Senak; he is home after his accident and recovering.

## **6. Call to the Public**

Chairperson Rahilly made a Call to the Public at 8:45 p.m. Hearing no response, call to the public was closed.

**7. Adjournment**

Motion by Board Member Conedera, seconded Gottschalk, to adjourn the meeting at 8:45 p.m. Motion carried 5-0-2.

Respectfully submitted,

Lauri French, Administrative Assistant  
Community Development Department  
June 19, 2012