

**MINUTES OF THE REGULAR MEETING OF THE GEORGETOWN CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD FEBRUARY 24, 2010**

The meeting was called to order at 7:30 p.m. by Chairperson Joyce Weise.

Members Present: Joyce Weise, John Fanthorpe, Greg Honderd, Carl DeVree, D. Dale Mohr
Members Absent: none
Others Present: Cliff Bloom, Township Attorney from Law Weathers & Richardson; Nathan Vriesman, Township Engineer from Prein & Newhof; Mannelle Minier, Secretary and Zoning Administrator; and the applicants

#100224-01 - Approval of the minutes

The minutes of the regular meeting held on August 26, 2009 were presented.

Moved by D. Dale Mohr, seconded by John Fanthorpe, to approve the minutes as presented.

MOTION CARRIED UNANIMOUSLY.

#100224-02 – (VAR1001)

Nytaan Body Shop, 1224 Rosewood St., is requesting the following in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-083, located at 1224 Rosewood St., Georgetown Township, Ottawa County, Michigan:

1. Appeal of the Zoning Administrator's ruling concerning the enforcement of the provisions of the Zoning Ordinance.
2. Interpretation of Sec. 27.4 and 27.7 and previously approved site plan.
3. To have a front yard setback of 74 feet, a variance of 6 feet from the 80 feet required in Chapter 24.
4. To have up to a zero landscaped area, a variance of up to 30 feet from the 30 feet required in Chapter 24 footnote (K) which states that except for necessary drives and walks, the required front yard for a depth of 30 feet shall be landscaped and shall not be used for parking, loading or accessory structures.
5. Curbing around all paved and landscaped area, a variance from Sec. 20.4(AD)(7) which states a raised curb of 6 inches in height shall be constructed along the perimeter of all paved and landscaped areas.
6. To have 9 trees in the landscaped area, a variance of 12 from the 21 trees required in Sec. 3.11 which states that one tree shall be provided for each 25 feet of frontage or fraction and the frontage is 511 feet.
7. To have 60 parking spaces with some which may not be considered to be "legal" as per the requirements in the ordinance, a variance from the previously approved variance VAR9812 approved in 1998 for the site to have 60 legal parking spaces.
8. To have the building constructed 41 feet from the road right-of-way, a variance of 9 feet from the 50 feet required in Sec. 20.4(AD)(3).
9. To have four drive entrances (curb openings), a variance of two from the maximum of two allowed in Sec. 20.4(AD)(5) which states no more than one curb opening shall be

- permitted for every 75 feet of frontage along any street, with a maximum of two per arterial street.
10. To have a drive or curb opening closer than 75 feet to any intersection and to have driveways located closer than 50 feet from another driveway, a variance from Sec. 20.4(AD) which states no drive or curb opening shall be located nearer than seventy-five (75) feet to any intersection nor more than twenty-five (25) feet to any adjacent residential property line. No drive shall be located nearer than fifty (50) feet, as measured along the property line, to any other driveway. A driveway shall not be permitted where, in the opinion of the Township Board, it may produce a safety hazard to adjacent pedestrian or vehicular traffic.
 11. To have no vehicle queuing space in front of each service bay, a variance from Sec. 20.4(AD)(16) which states that where applicable, vehicle queuing space shall be provided in front of each service bay for at least 2 vehicles.

#100224-02 Appeal a – Appeal Number 1 and Interpretation of Sec. 27.4 and 27.7

The zoning administrator presented a [review](#) and discussed the first two requests, which were as follows:

1. Appeal of the Zoning Administrator's ruling concerning the enforcement of the provisions of the Zoning Ordinance.
2. Interpretation of Sec. 27.4 and 27.7 and previously approved site plan.

Steve Witte, Nederveld Inc., represented the applicant and presented the requests for the first item. He stated that the Nylaan family and Doug Roede, builder, were present in the audience. He presented [letters](#) from the neighbors who were in favor of granting the variances. Steve Witte stated that while the ordinance addressed the fact that a structure damaged by fire less than 50% could be rebuilt, there was no mention of the course of action if the building was more than 50% destroyed.

Cliff Bloom stated that it is implicit in Michigan State Law, even if it is not drafted in the ordinance, that if a lawful nonconforming structured is destroyed, it must be rebuilt in compliance with current ordinances.

D. Dale Mohr said that chances are that the ordinance would not have been written with the 50% amount mentioned if the amount of damage did not determine the consequences.

The chairperson opened the public hearing. No one was present in the audience to speak at this time about this request. The chairperson closed the public hearing.

Cliff Bloom said that the implication of this determination would be township-wide, specifically if it was allowed for this site and not others. He said that the general law requires that if a nonconforming structure is destroyed, it could not be rebuilt unless it meets the current ordinances.

Moved by Greg Honderd, seconded by John Fanthorpe, to concur with the Zoning administrator's following determination because the cost to reconstruct the damaged building is more than 50% of the value of the building:

The Zoning Administrator's determination is that the reconstruction of the building exceeds 50% of the fair valuation of the entire building or structure at the time the

damage occurred. Since the ordinance states that nothing shall prevent the reconstruction of the nonconforming structure if the costs do not exceed 50% of the fair valuation of the building at the time the damage occurred, and the costs have been determined to EXCEED 50% of the fair valuation, the nonconforming structure shall not be reconstructed. Therefore, based on the previously noted ordinance sections in the review, any construction on the site MUST conform to the current ordinance. This determination includes the interpretation of Sec. 27.4 and 27.7 to mean that the nonconforming structure could not be rebuilt in the nonconforming location and that it must meet current ordinance requirements.

D. Dale Mohr asked if the motion should be tentative or final. He said that if the ZBA concurs, it would necessitate the rebuilding to conform to current ordinances or for variances to be obtained.

Cliff Bloom stated the following. If some of the determinations were overturned, the action may negate the necessity of some variances. The motions for the appeals and interpretations did not need to be tentative. If the costs to rebuild did not exceed 50%, the structure could be rebuilt as it was formerly constructed and the main variance for the front yard setback would not be needed. The Zoning Administrator's position is that the site has not complied with past conditions of special use permits, variances and ordinance requirements. Even if they did not need the variance for the front yard setback, the site would still have to comply with the past conditions. However, we would not be here at the ZBA because those elements are related to Township enforcement. The front yard setback variance request for the building to be rebuilt in the footprint triggered this application.

D. Dale Mohr said that if part (a) was not determined to be more than 50% damaged, the other variances would not need to be approved.

Cliff Bloom said that if the ZBA concurred with the determination regarding the 50% element, the ZBA would have to go through each request because they would now be necessary.

The Zoning Administrator explained that the reason the application included the appeals and interpretations, along with the variance requests, was in case the ZBA concurred with the determinations, the variance requests would be needed to rebuild the site as per the site plan provided by the applicant. She said that if the ZBA did not concur with the determination, the variances would not be needed and the building could be rebuilt in the same footprint.

Cliff Bloom explained that the interpretation made by the ZBA would apply Township wide and if the ZBA did not concur, it would affect other sites. He said that the other variance requests were site specific.

Steve Witte stated the following. He would like to address the Zoning Administrator's determinations relative to Sec. 27.4 and 27.7, specifically Sec. 27.7(B). The building was not being moved and relocated to another site. Granted, it would be removed to be reconstructed, but the building would not be physically moved. The entire site layout was previously approved ten years ago. The layout and the plan should not have to be re-approved. They planned to use the same footprint for the building. Even though the building was damaged, it should be rebuilt in the same place as proposed since it is the same place as shown on the plan and it is not going to be moved. The ordinance has not changed since the prior approval ten years ago.

Cliff Bloom stated the following. This was a good issue to bring up. However, Sec. 27.7 and 27.4 do not necessarily have to be evaluated separately or individually. It does not matter that Sec. 27.7(B) is not necessarily relevant to this situation because either one of the two sections could apply. Further, the beginning statement of the Sec. 27.7(B) is relevant, which reads as follows “Where a lawful structure exists at the effective date of the adoption of this Ordinance that could not be built under the terms of this Ordinance by reason of restriction on area, lot coverage, height, yards, its location on the lot, or other requirement concerning the structure, it may be continued so long as it remains otherwise lawful, subject to the following provisions.” Anyway, Sec. 27.4 is sufficient for the determination to be made that the cost to rebuild the nonconforming structure is more than 50% of the valuation of the building; therefore, the reconstruction must meet current ordinances.

Joyce Weise asked about the applicant’s statement that the site plan was previously approved by the Planning Commission.

Cliff Bloom stated the following. No body, except the ZBA, can waive the requirements of the Zoning Ordinance. Michigan law addresses such issues with what is referred to as “municipal nonestoppel,” which is when an official or Planning Commission or Township Board mistakenly violates the ordinance, the ordinance is not waived. If the Planning Commission approved the site plan ten, fifteen or three years ago, the applicant still has the responsibility to comply with the ordinance. Only the ZBA could waive the requirement. Some of these violations are currently up for variance requests. No waiver exists simply because the Planning Commission approved the site plan. Not related to this applicant, but others could play the game “gotcha” and hide violations to get approval. Then later the violations could become apparent. The site plan was approved in good faith and the approval does not mean that the ordinance requirements were waived.

Joyce Weise asked if the site plan approved in 1999 was only for the portion of the parcel where the new building was added.

Cliff Bloom said that the main building was lawful at the time even though it was now too close to the road.

The Zoning Administrator explained that when a site plan comes before the Planning Commission for approval for any change to the site, the Planning Commission reviews the entire site and consistently has required that the entire site meets ordinance requirements.

Greg Honderd said that even if the change was for just one building, the Planning Commission would require each building and the parcel as a whole to meet the Zoning Ordinances.

Joyce Weise said that she was curious why the 50% damage issue brought up the other issues and she wondered if the Planning Commission had approved only the addition on the site plan.

Cliff Bloom stated the following. The nonconforming right of the building was lost when the fire damage exceeded 50% of the valuation of the building. The Township now has the right to require that the other items be brought up to current standards since the applicant is applying for site plan approval and either special use approval or an amendment to an existing special use permit. Even if all the variance requests were approved, the previous conditions of approval would still have to be met. One special use permit was approved for outdoor storage behind building 3 and a condition of approval was stipulated that a planting screening was added around it. In addition, the Township has the authority to require that the standards of the ordinance are met, including the number of driveway

cuts and landscaping due to previous approvals and due to the current applications for site plan approval and for either special use approval or approval for an amendment to an existing special use permit. Also, conditions could be added to the approvals if they relate to the use, whether or not the building was lawful once because the nonconforming status has been lost and they are now required to meet current ordinances. Further, the applicants are now requesting site plan approval from the Planning Commission and special use approval from the Township Board and, consequently, are required to meet the current ordinances for those approvals.

Steve Witte stated the following. The entire site was reviewed in 1999 even though only one area was changed. Even the greenspace was done. The whole area was part of the review process. Some things have been there on the site for many years and are "grandfathered." If the building was close to the north property line and there was a building addition on the other side, it doesn't mean that they have to go back to review and change the existing conditions. These things have been there for many years.

Cliff Bloom stated the following. In his office they debated some of the points because there were no court decisions to follow and he questioned the continuation of the unlawfulness. If the applicant relied on the Township approval to prejudices or "laches," and if one card was pulled, they would lose the lawful nonconforming status. Some of the situations here are ten-year old conditions and they could change. If this decision is upheld, the lawful nonconforming status is lost.

The Zoning Administrator said that in 1999 when the applicant applied for a special use permit, the standards of the ordinance were required to be met. She said that regardless of that situation, the fact is that by applying for current special use approval or approval for an amended special use permit, those same standards are required to be met now at this time.

D. Dale Mohr said that the ordinance states that the building could be reconstructed if the cost to rebuild is less than 50% of the value of the building, which means that they cannot rebuild if the cost to rebuild the damaged building is more than 50% of the cost of the building.

Cliff Bloom said that it is implied in the ordinance that they could not rebuild the nonconforming aspects, and that they would either have to obtain a variance for the elements that did not comply with the Zoning Ordinance or else reconstruct the structure in compliance with the Zoning Ordinance.

The Zoning Administrator stated that she would interpret the ordinance to mean that the nonconforming building could not be reconstructed in the part of the footprint that did not conform to the ordinance; however, she would also interpret the ordinance to mean that anything that did comply with the ordinance could be constructed, as is the case with anything everywhere in the Township.

Cliff Bloom asked if the ZBA wanted to address both Sec. 27.4 and 27.7.

Joyce Weise said that Sec. 27.7 should be deleted.

Cliff Bloom said that not every section had to be the lynch pin, but the motion should be clear regarding the ZBA's decision to concur or not.

Greg Honderd stated the following. The motion he made is to concur with the Zoning Administrator's determination. If the ZBA did not concur, the reasons should be stated; however, if the ZBA concurs, it is for the reasons stated by the Zoning Administrator in the review. The Zoning

Administrator's determination included Sec. 27.7 which requires that a nonconforming use that moved must conform to current requirements. This building is not moved, so that is a moot point.

It was noted that the motion that was made concurs with the decisions and the findings for the Zoning Administrator's determination.

MOTION CARRIED UNANIMOUSLY.

#100224-02 Appeal b – Appeal of Zoning Administrator's determination regarding the enforceability of the ordinance standards for the previously approved site plan.

The Zoning Administrator presented a review for this appeal.

Cliff Bloom stated the following. His legal opinion is that the ZBA is without authority to determine that the ordinance standards are no longer enforceable for the previously approved site plan. This is a legal issue that the ZBA has no jurisdiction over. The ZBA has the authority to see what variances were granted in the past and what conditions were stipulated, and to see what is applicable to the property. What the applicant is asking, which is for the ZBA to determine that the previous standards of the ordinance and conditions that were and are in effect, are waived or are no longer applicable. The ZBA does not have that authority.

Joyce Weise said that the applicants are appealing the Zoning Administrator's determination as to how this relates to their situation and she asked if the ZBA should act on the appeal.

Cliff Bloom clarified that the ZBA could act on the appeal.

Steve Witte stated the following. He has already discussed the curbing and landscaping requirements with the Nylaans and they are aware that these were required. They apologize and had not intended to not put those in. At the time they had two driveways in place. The whole premise for the debate is that the plan was approved ten years ago when the applicant came in front of all the governmental bodies and the plans were approved and permits were issued. It is not right that eight to ten years later this has changed.

D. Dale Mohr asked what the reasons were for noncompliance. He confirmed that Steve Witte was involved but did not oversee the construction.

Steve Witte said that he was at all the meetings and knows what happened. He said that he can't tell why some elements were not put in and he was not aware that they were not put in. He said that the Township building official at the time approved the site.

D. Dale Mohr asked if they had been aware of the requirement of what had to be done.

The chairperson opened the public hearing.

Harold Nylaan, owner, stated the following. Back ten years ago when they put up the other building, the State told them that they did not have to put the curbs in. They put the islands in 35 years ago. The site was zoned HS and it is still zoned HS. He is a dealer with a dealer's license to sell cars and he got permission to put the buildings up. It would put him out of business if he had to do some of the things being discussed and then there would be an empty building. He pays taxes and five

families are trying to make a living at this business. He would go broke and the Township could take it over and make a park.

The chairperson closed the public hearing.

Steve Witte said that he wanted to reiterate that if all of these improvements the Township is proposing are required, the Nylaans believe that it will force them out of business and they have already had this discussion.

Moved by Greg Honderd, seconded by D. Dale Mohr, to concur with the Zoning administrator's following determination:

The Zoning Administrator's determination is that the site must be brought up to the current standards relative to the site such as landscaping for 30 feet of the front yard setback, number of trees required in the landscaped area, curbing and number of driveways since these had been required for the previous special use approval and are required for the current special use approval and site plan approval (these requirements were in the Zoning Ordinance in 1999 when the previous site plan and special use approval were granted). No variances were approved to waive the curbing requirement, to waive the landscaping requirement relative to number of trees required, to waive the 30 foot landscaping requirement or to allow more driveways than the maximum of two listed in the special use standards.

D. Dale Mohr stated the following. In regard to the site being "grandfathered" from 1999, it is not unusual for a body to concur with the new ordinance because when there was an addition to a church, the rest of the site stayed the same. However, since they built an addition, even though nothing else changed, the new requirements were triggered. This is previous Township precedent.

MOTION CARRIED UNANIMOUSLY.

#100224-02 Appeal c - The Zoning Administrator's determination is that sidewalks would be required.

The Zoning Administrator stated that putting this item on the ZBA agenda was a mistake because the sidewalk requirement was a general ordinance listed in the Code of Ordinance and the ZBA had no jurisdiction over sidewalks.

Cliff Bloom said that since this requirement is not in the Zoning Ordinance, the ZBA has no jurisdiction over this and this appeal should be removed.

#100224-02 Appeal d,e, f – Compliance with the Special Use Permit Standards and Other Requirements.

Appeal d.

The Zoning Administrator presented a review on this section.

Steve Witte stated the following. He disagrees. He brought the previously approved plan. He referenced the drive and curbing in front of the eastern building. The whole stretch is paved and they

were made to put curbing in for the two drives and the one big one. They were made to put the island in. The Township is now saying that they made the owner illegally create this. The Township approved the plan and the Township and Road Commission made them do this.

Cliff Bloom stated the following. The problem is trying to reconstruct what took place over ten years ago and we just don't know what happened. They have heard one perspective and it all goes to the condition of the variances. The ZBA is without jurisdiction over the past variances, special use approvals and sections of the Zoning Ordinance that are still applicable. These are legal questions and not factual questions as to whether or not these variances were approved and the conditions attached. The applicant could appeal this if it was appropriate; however, this is a legal issue and the ZBA has no jurisdiction over this and cannot change anything that was part of a previous approval.

The Zoning Administrator said that she determined that the special use standards in the Zoning Ordinance should apply because they were part of the previous special use approval; in addition, they are also applicable now because the applicant is currently requesting special use approval or approval for an amended special use permit.

Joyce Weise asked if they already had special use approval and how it affected the site.

Cliff Bloom said that they currently have a special use permit for the whole site and they are currently applying for either special use approval or approval for an amendment for an existing special use permit for the whole site since the site changed and a building now has to be constructed.

Joyce Weise asked why they were applying for a new special use permit.

Cliff Bloom said that if the ZBA approves the variances and requires changes on the site, it throws off the current special use permit and the site plan will be out of kilter. He said that they would then have to go the Planning Commission and Township Board for new approvals.

Joyce Weise said that if there are changes, it changes the special use permit.

The Zoning Administrator stated the following. The fact that the applicant is applying for a special use permit or an amendment to an existing special use permit is not contested by the applicant. In fact, it was the applicant's engineer who brought up the changes that require the new application for a special use permit. The Township concurs that it could either be a new special use permit or an amendment to the existing special use permit. However, it is really irrelevant as to which way to consider it because the special use standards and process to proceed would be exactly same and the standards of the ordinance would be exactly same.

Harold Nylaan said that he is only asking to put the building back up where it was and the fire was not their fault. He said that all they want to do is to put the building back up and it has been this way for 35 years under the old ordinance. He said that the road was widened and it was not their fault.

The determination of the ZBA was that Appeals d, e and f were all basically the same and would be acted upon together.

The chairperson opened the public hearing. No one present in the audience made public comments at this time. The chairperson closed the public hearing.

Appeal e.

Steve Witte stated the following. He does not disagree that the Planning Commission can't grant a variance. However, the Planning Commission approved the site plan. The drive entrances were specifically reviewed and the Township wanted them this way.

Joyce Weise said that there really are no specific driveways with specific barriers. She said that traffic migrates over what looks like one wide drive entrance the whole length of the property.

Nathan Vriesman said that it looks to him like four driveways.

Steve Witte stated the following. He worked on this and was there when the Planning Commission discussed this in the past. He discussed this with the Road Commission present. This was what they wanted. He didn't think the rolled curb ended up the way the Road Commission or Township thought it would be or that it does what it was designed it to. It was supposed to define the entrances. The Road Commission inspected it.

Cliff Bloom said that we don't know who did what and the bottom line is that the ZBA doesn't have the authority to say that conditions that were stipulated with previous approvals are no longer valid or to say that ordinance sections that were relevant at the time are no longer valid or relevant.

The Zoning Administrator said that the determination for d should also include the fact that while those special use standards in the ordinance were valid in 1999 when the special use permit was initially approved, those same standards are also valid and applicable now for the current application for special use approval or an amendment to an existing special use permit.

Appeal f.

The determination was that appeals d,e and f were basically the same and the applicant agreed.

Appeal d motion:

Moved by Joyce Weise, seconded by John Fanthorpe, to concur with the Zoning administrator's following determination, along with the fact that this applies to the new special use application and/or amendment to the existing special use permit:

The Zoning Administrator's determination is that the site must comply with the special use permit standards and other ordinance standards that were in effect in 1999 (other than those elements where variances were granted) even though the Planning Commission approved a site plan in 1999 that did not comply with ordinance requirements. The determination is that the Planning Commission does NOT have the authority to grant a variance or to approve a site plan contrary to the provisions of the ordinance.

MOTION CARRIED UNANIMOUSLY.

Appeal e motion:

Moved by Greg Honderd, seconded by John Fanthorpe, to concur with the Zoning administrator's following determination:

The Zoning Administrator's determination is that the site must comply with all of the following special use standards in Sec. 20.4(AD) due to the fact that a previous special use permit was approved and these are standards of approval that were in effect at the time and no variances were granted to waive these requirements. Also, a special use permit application has currently been submitted since the site was changed and these are the standards of the ordinance required for approval of a special use permit.

Sec. 20.4 (AD) Vehicle service stations and repair.

- (1) Minimum lot area shall be 15,000 square feet.
- (2) Minimum lot width shall be one hundred (100) feet.
- (3) All buildings, structures, and equipment shall be located not less than fifty (50) feet from any right-of-way line and not less than fifty (50) feet from any side or rear lot line abutting residentially zoned property.
- (4) Ingress and egress drives shall be designed in accordance with the standards of the Ottawa County Road Commission.
- (5) No more than one (1) curb opening shall be permitted for every seventy-five (75) feet of frontage (or major fraction thereof) along any street, with a maximum of two per arterial street, and one for any other street.
- (6) No drive or curb opening shall be located nearer than seventy-five (75) feet to any intersection nor more than twenty-five (25) feet to any adjacent residential property line. No drive shall be located nearer than fifty (50) feet, as measured along the property line, to any other driveway. A driveway shall not be permitted where, in the opinion of the Township Board, it may produce a safety hazard to adjacent pedestrian or vehicular traffic.
- (7) A raised curb of six (6) inches in height shall be constructed along the perimeter of all paved and landscaped areas.
- (8) All areas not paved or occupied by buildings or structures shall be landscaped.
- (9) All lubrication equipment, hydraulic hoists, and pits shall be enclosed entirely within a building. All gasoline pumps shall be located not less than fifty (50) feet from any lot line, and shall be arranged so that motor vehicles shall not be supplied with gasoline or serviced while parked upon or over-hanging any public sidewalk, street or right-of-way.
- (10) When the site adjoins residentially zoned property, a greenbelt or sight-obscuring fence shall be provided in accordance with Section 3.11.
- (11) In the HS and I Districts, all outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a six (6) foot sight-obscuring wall or fence. No such outside storage area shall exceed an area of two hundred (200) sq. ft. Outside parking of disabled, wrecked, or partially dismantled vehicles not to exceed a maximum of five (5) such vehicles shall not be permitted for a period exceeding ten (10) days. No such outdoor storage areas or parking of disabled, wrecked, or partially dismantled vehicles shall be permitted in the CS district. (revised 12-29-1998)
- (12) The rental of trucks, trailers, and any other vehicles on the premises is expressly prohibited without specific approval by the Township Board. If such use is permitted, proper screening, landscaping, and additional parking area shall

be provided in accordance with the requirements set forth by the Township Board.

(13) (deleted 10/27/08).

(14) All exterior lighting, including signs, shall be erected and hooded so as to shield the glare of such lights from view by adjacent property.

(15) On a corner lot, both street frontage sides shall be subject to all the applicable front yard provisions of this Ordinance.

(16) Where applicable, vehicle queuing space shall be provided in front of each service bay for at least two (2) vehicles.

The chairperson opened the public hearing. No one was present in the audience to make public comments at this time. The chairperson closed the public hearing.

MOTION CARRIED UNANIMOUSLY.

Appeal f motion:

Moved by Greg Honderd, seconded by John Fanthorpe, to concur with the Zoning administrator's following determination:

The Zoning Administrator determination regarding parking and storage is as follows because these were previous conditions of approvals and no variances were granted to waive these requirements. Further, the Planning Commission does not have the authority to waive a requirement for a condition of approval stipulated by the ZBA. The determination includes the fact that no rights exist to continue to violate these requirements simply because the site has not complied with these requirements for the past ten years.

- a. **As per SUP8510, all storage is to be located within the fenced area and trees are required to be planted around the fencing.** This condition of approval is still in effect and the site must comply with this requirement.
- b. **As per VAR9812, the site with the current square footage has an approved variance to have 60 LEGAL parking spaces.** This condition of approval is still in effect and the site must comply with this requirement.
- c. **As per VAR9908, there is to be no outdoor storage of any parts or other items and that all stored vehicles be placed within the storage area or within an enclosed building, and further that the outside storage could only be used for vehicles and the outside storage of tires, spare parts, packing material and all other such items is prohibited. A variance was approved to have 32 vehicles in a security lot.** This condition of approval is still in effect and the site must comply with this requirement.

The chairperson opened the public hearing. No one was present in the audience to make public comments at this time. The chairperson closed the public hearing.

MOTION CARRIED UNANIMOUSLY.

#100224-02 Variances #3 & 8 -

- 3. To have a front yard setback of 74 ft., a variance of 6 ft. from the 80 feet required in Chapter 24.**
- 8. To have the building constructed 41 feet from the road right-of-way, a variance of 9 feet from the 50 feet required in Sec. 20.4(AD)(3).**

The Zoning Administrator presented the following review.

Variance standards in Sec. 28.11(C) are required to be met in order for a variance to be granted. The ZBA should determine if they agree with the determination that the following standards are met or not met.

Variance ID		VAR1001	
Applicant		Nylaan Body Shop	
Address		1224 Rosewood St.	
Request		Front yard setback	
Date		For February 24, 2010 meeting	
#	YES	NO	CONDITIONS (Chapter 28.11-C)
1	X		Granting the variance(s) will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.
2	X		Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.
3	X		That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.
4			That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.
5			That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.
6			That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance with Section 27.12.
7	X		That the variance is not necessitated as a result of any action or inaction of the applicant.

Standard #1 - Granting the variance will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.

Appears to be met. The spirit of the ordinance is to provide uniform building setbacks from the road right-of-way. This area was developed many years ago (beginning in 1975) and the structures in this area have similar setbacks. However, the only issue concerning the public interest would be if by granting the variance the uses, structures and parking would not be able

to fit on the site without spilling over to the roadway with parking, loading and unloading and other uses related to the vehicle repair. A condition of approval could be added that the spirit of the ordinance would be met and the public interest served with the new setback as long as the use is totally constrained to the parcel and does not encroach upon the public right-of-way.

Standard #2 - Granting the variance shall not permit the establishment within a district of any use, which is prohibited, nor shall any use variances be granted.

Met as long as a special use permit is obtained and the site and use comply with the special use standards.

Standard #3 - That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.

Met. This area of Georgetown Township was developed many years ago and the structures have existed in this location for many years. The structure burned and the applicant would like to replace it in the current location.

Standard #4 - That the granting of such variances will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.

The ONLY way this standard would be met would be to require the addition of curbing to create defined driveways in the locations recommended by the Road Commission and MDOT which would limit the use from spilling out into the roadway and prohibit unlimited vehicular access. If the use is not constrained to the parcel and constraints are not install to prevent the use from interfering with traffic on Rosewood and at the intersection, then this standard would NOT be met because as the site currently exists, it is a substantial detriment to the traffic on Rosewood and at the intersection as evidenced by the MDOT study.

Standard #5 - That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

The ZBA should determine if this standard is met.

Standard #6 - That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance in Section 27.12.

The ZBA should determine if this standard is met. There are many nonconforming elements on the site (some legal and some illegal). If the elements that are in violation or in noncompliance with ordinance standards and standards of approval are adequately addressed, this standard could be determined to be met.

Standard #7 - That the variance is not necessitated as a result of any action or inaction of the applicant.

Appears to be met. The fire resulted in the request for the building location since it appeared to have met the ordinance requirement at the time it was initially constructed.

DISCUSSION

It appears to be appropriate to allow the building to be reconstructed in the same location that it existed before the fire as long as the site is NOT permitted to continue to operate in such a way as to be detrimental to the traffic on Rosewood and to the traffic at the intersection.

Steve Witte stated the following. The site plan as presented shows what the Nylaans are willing to do. All the variance requests are closely related and overlap and could be tentative. Approval of these particular variance requests would allow the building that was damaged by fire to be rebuilt in exactly the same location which is at a setback in line with everything on the property and in line with the properties to the west. Letters have been submitted from the neighbors in support of granting the variances. When the general welfare is considered, note that all the neighbors are in favor of granting the variance. It is important to note that the utilities would be affected if the building was pulled back and it would create a hardship for the utilities.

D. Dale Mohr asked if standard number 6 could be met because if this was granted, wouldn't it perpetuate the nonconformity.

Cliff Bloom said that a strict interpretation of this standard would prohibit the approval of any variances for any nonconforming structures. He tends to think that this relate more to new construction rather than to rebuilding an existing structure. This standard would not permit rebuilding the structure ten feet closer to the street and doing that would be extending or perpetuating the nonconformity.

Joyce Weise said that related to the site plan, this does not address the two driveway issue and that would come up later. She said that if the ZBA determines to approve this variance, it should be tentative.

Cliff Bloom said that the ZBA could approve the variance contingent upon the number of curb cuts and decide differently if the motion is made tentatively.

Steve Witte said that the building existed in this footprint before the fire and if they did not need the 9 feet further to the south, since the only part that is nonconforming is the north 9 feet, they would not need a variance. He said that it is important to locate the building in the same spot because of utilities and the location of the office. He said that this is critical.

Joyce Weise asked why this building is so important.

Steve Nylaan stated the following. There are twelve foot doors for the big vans and whatever else the other buildings could not handle. They store the loaner vehicles there. They also perform maintenance on their own wreckers in there. They store the wreckers in there because in the winter they can't have the wreckers outside because they would freeze. They have to be ready 24 hours a day. They work on big things in the building. The office is at the north end and is heated. The utilities are up front. The main building is "L" shaped. There is outdoor storage behind the building to the west. There are frame racks in the building and a firewall between sections.

Joyce Weise asked about the main building for the wreckers and for storage.

Steve Witte said that they work out of the two eastern buildings and they rent out the western building to Rosewood Auto.

D. Dale Mohr said that earlier someone had mentioned that Rosewood Auto moved.

Steve Witte clarified that Rosewood Auto had moved into the western building.

The chairperson opened the public hearing. No one was present in the audience to make public comments at this time. The chairperson closed the public hearing.

Cliff Bloom clarified that variance requests number 3 and 8 are the same because they relate to the building's location on the site and the building's setback.

D. Dale said that the ZBA should determine if all the standards of the ordinance have been met.

Variances #3 motion -

Moved by Greg Honderd, seconded by John Fanthorpe, to tentatively approve variance (VAR0911) Nylaan Body Shop, 1224 Rosewood St., to have to have a front yard setback of 74 feet, a variance of 6 feet from the 80 feet required in Chapter 24, in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-083, located at 1224 Rosewood St., Georgetown Township, Ottawa County, Michigan; based on the finding that the request meets the seven standards of the ordinance. The key is standard number 5 which states "That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district," because this is the same setbacks as the other buildings including the neighbors to the west.

- 1. This motion is contingent upon a final motion being approved at the end of this process by the Zoning Board of Appeals finalizing all of the tentative motions made regarding all of the Nylaan variance requests and the same being approved by the Zoning Board of Appeals at the end of the process.**
- 2. This variance approval is expressly contingent upon any special land use approval (or amendment to an existing special land use permit) for the property being approved by the Township Board.**
- 3. This variance is expressly contingent upon final site plan approval for the property by the Planning Commission.**
- 4. This variance approval is expressly contingent upon the property coming into full compliance with all conditions of approval from any past variance, special land use and site plan approvals granted in the past by the Township and also complying with all other Zoning Ordinance requirements which are applicable to the property. Such compliance must occur no later than the completion of construction of the building at issue or a certificate of occupancy being issued for the completed building at issue.**

MOTION CARRIED UNANIMOUSLY.

VariANCES #8 motion -

Moved by Greg Honderd, seconded by D. Dale Mohr, to tentatively approve variance (VAR0911) Nylaan Body Shop, 1224 Rosewood St., to have the building constructed 41 feet from the road right-of-way, a variance of 9 feet from the 50 feet required in Sec. 20.4(AD)(3), in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-083, located at 1224 Rosewood St., Georgetown Township, Ottawa County, Michigan; based on the finding that the request meets the seven standards of the ordinance. The key is standard number 5 which states "That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district," because this is the same setbacks as the other buildings including the neighbors to the west.

1. This motion is contingent upon a final motion being approved at the end of this process by the Zoning Board of Appeals finalizing all of the tentative motions made regarding all of the Nylaan variance requests and the same being approved by the Zoning Board of Appeals at the end of the process.
2. This variance approval is expressly contingent upon any special land use approval (or amendment to an existing special land use permit) for the property being approved by the Township Board.
3. This variance is expressly contingent upon final site plan approval for the property by the Planning Commission.
4. This variance approval is expressly contingent upon the property coming into full compliance with all conditions of approval from any past variance, special land use and site plan approvals granted in the past by the Township and also complying with all other Zoning Ordinance requirements which are applicable to the property. Such compliance must occur no later than the completion of construction of the building at issue/a certificate of occupancy being issued for the completed building at issue.

MOTION CARRIED UNANIMOUSLY.

#100224-02 VariANCES #4, 5, 6 9 and 10-

4. To have up to a zero landscaped area, a variance of up to 30 feet from the 30 feet required in Chapter 24 footnote (K) which states that except for necessary drives and walks, the required front yard for a depth of 30 feet shall be landscaped and shall not be used for parking, loading or accessory structures.
5. Curbing around all paved and landscaped area, a variance from Sec. 20.4(AD)(7) which states a raised curb of 6 inches in height shall be constructed along the perimeter of all paved and landscaped areas.
6. To have 9 trees in the landscaped area, a variance of 12 from the 21 trees required in Sec. 3.11 which states that one tree shall be provided for each 25 feet of frontage or fraction and the frontage is 511 feet.
9. To have four drive entrances (curb openings), a variance of two from the maximum of two allowed in Sec. 20.4(AD)(5) which states no more than one curb opening shall be permitted for every 75 feet of frontage along any street, with a maximum of two per arterial street.
10. To have a drive or curb opening closer than 75 feet to any intersection and to have driveways located closer than 50 feet from another driveway, a variance from Sec. 20.4(AD) which states no drive or curb opening shall be located nearer than seventy-five (75) feet to any

intersection nor more than twenty-five (25) feet to any adjacent residential property line. No drive shall be located nearer than fifty (50) feet, as measured along the property line, to any other driveway. A driveway shall not be permitted where, in the opinion of the Township Board, it may produce a safety hazard to adjacent pedestrian or vehicular traffic.

The Zoning Administrator presented a review as follows.

These five requests are being reviewed together since each one is basically dependent upon the others. The ZBA needs to determine the number of driveways; then the curbing that would be required should be considered (particularly to define the driveways and limit the access); and finally the landscaping area and number of trees required could finally be considered.

The review will provide discussion points to consider and suggestions for determination of whether or not the request meets the standards of the ordinance. In addition, ideas will be presented of possible alternatives or possible partial variances that could be granted in order to redesign the site in a way that is not detrimental to the traffic on Rosewood and still provide a working alternative for the shop to continue to operate.

Variance standards in Sec. 28.11(C) are required to be met in order for a variance to be granted. The ZBA should determine if they agree with the determination that the following standards are met or not met.

Variance ID		VAR1001	
Applicant		Nylaan Body Shop	
Address		1224 Rosewood St.	
Request		Landscaping, curbing and driveways	
Date		For February 24, 2010 meeting	
#	YES	NO	CONDITIONS (Chapter 28.11-C)
1		X	Granting the variance(s) will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.
2	X		Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.
3			That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.
4		X	That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.
5		X	That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.
6		X	That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance with Section 27.12.
7		X	That the variance is not necessitated as a result of any action or inaction of the applicant.

Standard #1 - Granting the variance will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.

NOT MET. The spirit of the ordinance is “to promote and safeguard the public health, safety, morals, prosperity and general welfare of the people of this Township,” as stated in the Zoning Ordinance. As evidenced by the [letter dated January 21, 2010](#) from the Ottawa County Road Commission and in the M-121 (Chicago Drive) Corridor Access Management Plan (**CAMP**) prepared for MDOT, this is an area of concern having “poor intersection-to-driveway spacing” with commercial driveways that are within the functional area of the intersections. The Plan references this site as in need of redesign and reconstruction and discusses retrofitting recommendations of redesigning and reconstruction of the existing wide open/undefined access zones, along with a more defined location of ingress/egress further away from the functional areas of adjacent intersection. The Plan even provides a graphic aerial photo depicting the area where curbing should be installed to limit driveway access away from the intersection. The Ottawa County Road Commission wants to see modification to the access of this site for the safety of pedestrians and the motoring public, as well as the customers and staff of Nylaan Body Shop.

Further, pictures provide the information that the driveways are not clearly defined with curbing since the grassed areas are used for parking, access and snow storage. Plus the raised concrete divider does nothing to limit access. This results in access to the site most of the distance of the frontage on Rosewood. The Road Commission’s recommendation is for high-back concrete curbing to be continued the whole length of the frontage of the parcel to connect to the high-back curbing to the east of the site, except for driveway openings which should be fitted with low-back MDOT M-openings. All driveways should have high-back concrete curbed radii. If the drive between the center and east buildings remains, it should be shifted west to provide better harmony with the traffic lanes and parking. Access from this point east should be eliminated by the placement of high-back concrete curb.

Standard #2 - Granting the variance shall not permit the establishment within a district of any use, which is prohibited, nor shall any use variances be granted.

Met as long as the site complies with the special use standards.

Standard #3 - That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.

The ZBA will have to determine if this is met. Obviously there are difficulties for the business to comply with the ordinance because the site has been overdeveloped to a point of where it has spilled over into the right-of-way just to operate. There may be some compromised that could work for the business as well as for the redesigning of the site to eliminate some of the detrimental impacts.

Standard #4 - That the granting of such variances will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.

NOT MET. **The ONLY way this standard would be met would be to require the addition of curbing to create defined driveways in the locations recommended by the Road Commission and MDOT which would limit the use from spilling out into the roadway and prohibit unlimited access.** If the use is not constrained to the parcel and constraints are not installed to prevent the use from interfering with traffic on Rosewood and at the intersection, then this standard would NOT be met because as the site currently exists, it is a substantial detriment to the traffic on Rosewood and at the intersection as evidenced by the MDOT study.

Standard #5 - That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

NOT MET. No other properties have the right to unlimited undefined access to a major public road. No other properties have the right to operate their business with parking and loading and unloading within the road right-of-way in such a way as to be detrimental to vehicles traveling on a public roadway. The fact that that use is detrimental to traffic is substantiated by the MDOT study and by documentation presented by the Road Commission. Further, **the three properties to the west** on the same side of the street have defined driveways and landscaped areas in the front setbacks. If the variance was to be granted as requested, this property would have rights that NO other properties in the vicinity have. The other sites have not been developed to the extent that their uses do not fit on their parcels.

Standard #6 - That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance in Section 27.12.

NOT MET. There are many nonconforming elements on the site (some legal and some illegal), along with many enforcement issues. If the elements that are in violation or in noncompliance with ordinance standards and standards of approval are adequately addressed, this standard could be determined to be met.

Standard #7 - That the variance is not necessitated as a result of any action or inaction of the applicant.

NOT MET. The current situation is a result of overdevelopment of the site, along with development of the site contrary to Township ordinances and conditions of previous approvals. The variance request is ONLY necessitated by the fact that these elements were not installed in 1999 when the special use permit was approved.

DISCUSSION

Evidence has been provided from MDOT and the Road Commission to substantiate the facts that the site as currently operating is detrimental to the traffic on Rosewood and at the intersection. According to the Road Commission and MDOT, the site is in need of redesigning to limit the access so that vehicles cannot have unlimited access, to limit the number of driveways to the site and to define the driveways with 6 inch curbing as required in the special use permit standards (both the curbing requirement and the requirement that the driveways are constructed as per Road Commission specifications). After these issues are addressed, the landscaping requirement should be considered.

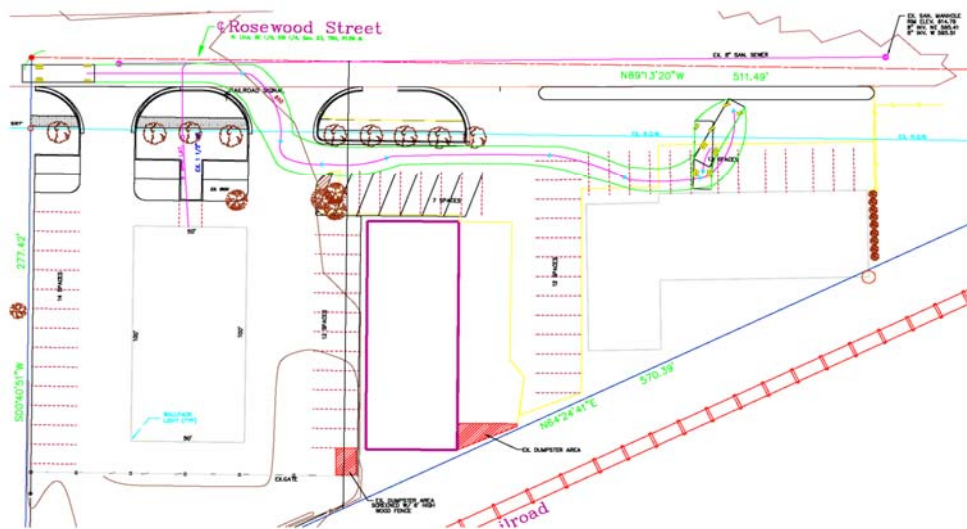
The three properties to the west all have defined driveways and landscaped areas in the front yard setback area. Why should this property be allowed to have unlimited access to Rosewood with no landscaped areas when these properties do not have the same rights.

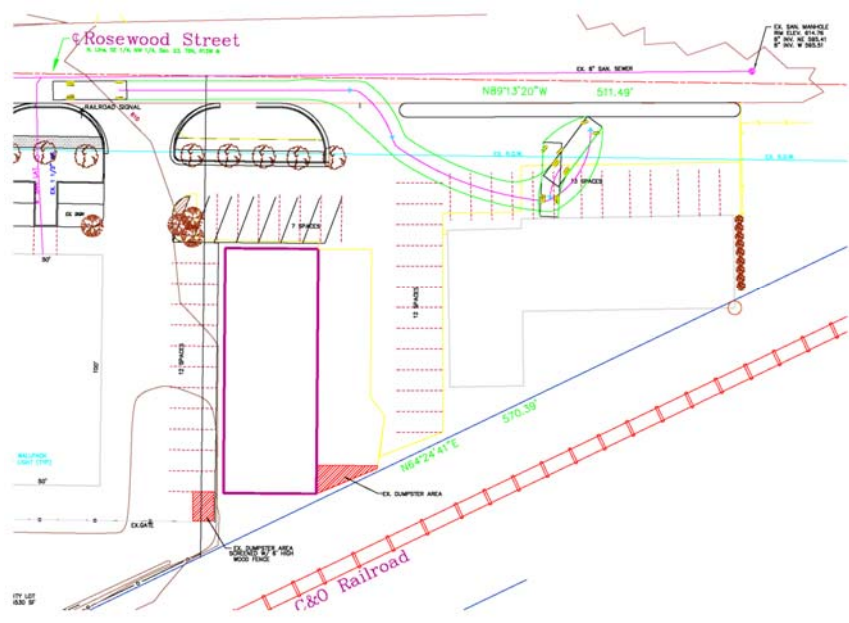
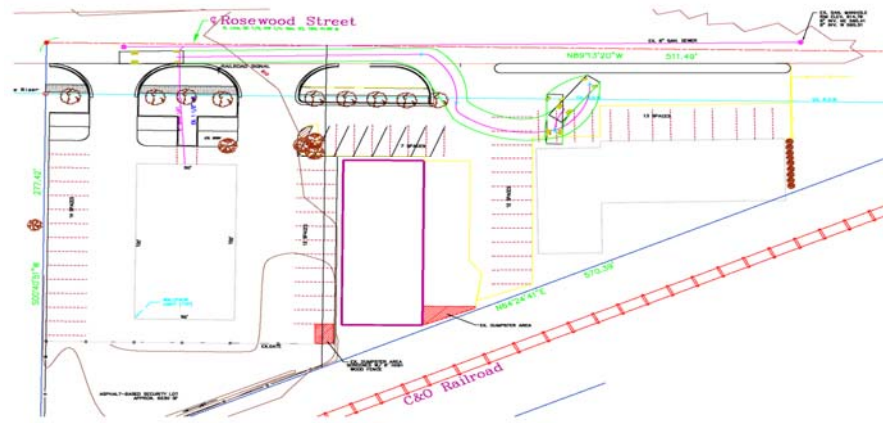
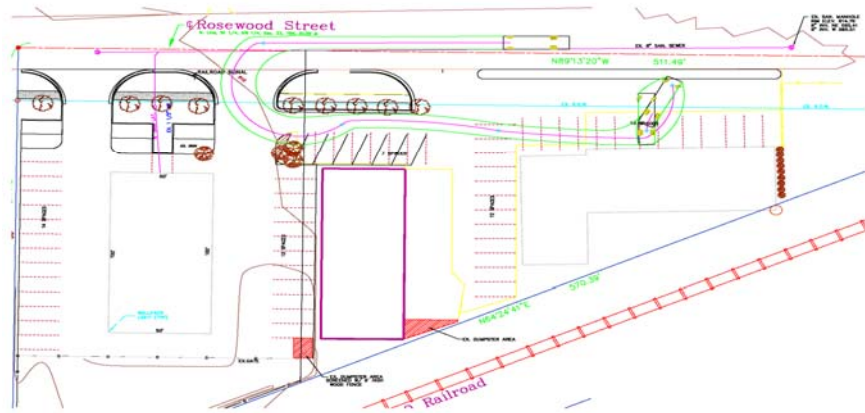
Options exist for compromises to be achieved that will allow the business to continue to operate. A logical way to consider the requests would be to proceed as follows.

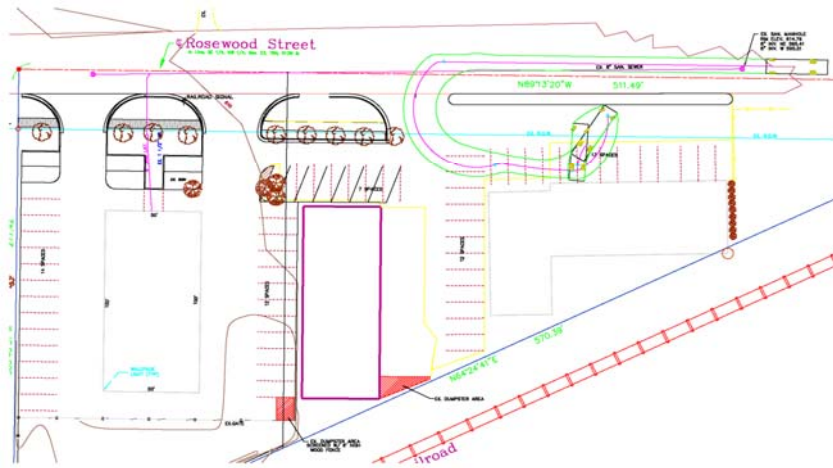
1. The ZBA could initially determine the number of driveways to be allowed and, if more than two, consider the request for a variance from the special use standard that allows a maximum of two. None of the neighboring parcels has more than one.
2. After the number of driveways to be permitted is determined, the curbing could be considered since the curbing would be used to define the driveways as well as the landscaped areas.
3. Following the above determinations, the ZBA could consider the requests to waive the 30 foot landscaped area and the number of trees to be required in the landscaped area.

#100224-02 Variances #9 and #5 (number of drive entrances and curbing)

Nathan Vriesman explained the sketches he provided and noted that the trucks would be able to travel to have access to the overhead doors, even if the curbing was required.







The Zoning Administrator explained that she had provided some sketched options, as follows, for curbing, greenspace and limited driveways only to provide ideas for the ZBA to consider.

Option 1



The first option includes the following (note that the option encompasses the recommendations in the Ottawa County Road Commission letter and the MDOT Chicago Drive Plan):

- a. To limit the amount of driveways to two.
- b. To connect to the Ottawa County Road Commission curbing to the east and continue that curbing to the west to connect to the green space in front of the middle building, eliminating access from the east portion of the site. That curbing could be added to the north and south of the area where the raised concrete currently exists and could include a green space within that six foot area to be planted with grass and landscaping of the type and size to be approved by the Ottawa County Road Commission.
- c. To add curbing to define the green space in front of the middle building, the western building and the area along the western border of the property.
- d. To add curbing from the northeast point of the building to connect to the curbing at the north to restrict access and parking towards the intersection in the grassed area.

Option 2



The second option includes the following (note that the option encompasses the recommendations in the Ottawa County Road Commission letter and the MDOT Chicago Drive Plan):

- a. To limit the amount of driveways to two.
- b. To connect to the Ottawa County Road Commission curbing to the east and continue that curbing to the west and ending at a spot to define a driveway access aligned with the drives between the eastern and middle buildings, which eliminates unlimited access along the east portion of the site. That curbing could be added to the north and south of the area where the raised concrete currently exists and could include a green space within that six foot area to be planted with grass and landscaping of the type and size to be approved by the Ottawa County Road Commission.
- c. To add curbing to define the green space in front of the middle building and western building, and the area along the western border of the property.
- d. To add curbing from the northeast point of the building to connect to the curbing at the north to restrict access and parking towards the intersection in the grassed area.

Option 3

The third option includes the following (note that the option encompasses the recommendations in the Ottawa County Road Commission letter and the MDOT Chicago Drive Plan):

- a. To allow three driveways to remain on the site and use curbing to define those driveways to prohibit unlimited access to the site.
- b. To connect to the Ottawa County Road Commission curbing to the east and continue that curbing to the west to define the eastern-most driveway. That curbing could be curved around the area where the raised concrete currently exists and to include a green area within that six foot distance to be planted with landscaping of the type and size to be approved by the Ottawa County Road Commission.
- c. To add curbing to define the green space in front of the middle building and western building, and the area along the western border of the property.
- d. To add curbing from the northeast point of the building to connect to the curbing at the north to restrict access and parking towards the intersection in the grassed area.

Nathan Vriesman further explained the truck movements if the site was to have curbing and defined driveways. He talked about a blunt nose end.

Joyce Weise asked about the curbing.

The Zoning Administrator said that the ordinance requires a raised 6 inch curb.

Steve Witte stated the following. The site should be developed as shown on the previously approved site plan. The curbing is the most critical element as previously stated because the eastern driveway is the main driveway. If it has to be modified by the addition of curbing, it would cause a significant hardship to the business, especially with the office at the east end. If someone drives in, there would be no way to get out. Another concern is access to the overhead doors on the north side of the building. With any high-back curb, it would be impossible for trucks to access the overhead doors. The vehicle used by the Township engineer that showed possible access with the curbing is smaller than those used by the Nylaans. The one used for the sketch was 23 feet long and the Nylaans have a

28 foot truck with a bed, resulting with an overall length of 33 to 36 feet. The auto-turn program gets close, but is not 100% accurate, plus access is shown driving through the parking spaces. The Nylaans know how much room they need and we should trust the person using this area every day rather than trusting a computer program. The concern for public safety is understandable; however, the neighbors are in favor of granting the variance. There have been very few accidents in this area. Also, all of these things were reviewed ten years ago.

D. Dale Mohr asked for an explanation of a bull nose and the depth. The explanation was provided.

Steve Witte said that the six feet in the area of the rolled curbing makes all the difference in the world for trucks accessing the site.

John Fanthorpe said that in addition to Nylaan's trucks, other towing vendors may be dropping off vehicles. He said that they also may be pulling a truck and it may not be maneuverable, especially if they have to back up. He asked about snow removal since we get a lot of snow. He said that this is a unique shaped lot and there was practical difficulty with snow clearance, especially if they don't have access to the fields across the street.

Joyce Weise said that access may be a little more difficult with the site as drawn.

Mrs. Nylaan said that she works in the office and the snow plow knocked down their utility pole when they turned around on their site.

Joyce Weise asked if the utility pole was in the road right-of-way.

The Nylaan said that it was on their property.

Steve Witte clarified that the utility pole was in the road right-of-way, as shown on the site plan.

Harold Nylaan said that people have a straight shot from 12th Ave. and drive straight across Rosewood to access their property. He said that in the summertime kids drive fast from as far as the hill on Rosewood and they need to slow down. He said that cars can't turn around in his lot.

Joyce Weise said that the concrete island was installed in 1999 and there are no curbs in the road right-of-way. She said that the business uses the road right-of-way to access the property.

Steve Witte said that is has been this way for 35 years.

Joyce Weise asked if the driveways needed Road Commission and MDOT approval.

The Zoning Administrator said that copies of the Road Commission's recommendation in a letter had been provided, along with MDOT's recommendation in the Chicago Dr. Study. She said that they both recommend curbing the area to limit the uncontrolled access and to define driveways.

Joyce Weise said that MDOT specifically identified this area as one needing improvements in the Chicago Dr. Study.

Harold Nylaan said that his business has been operating this way for 35 years and the road had been expanded. He said that if the eastern building had burned down, they would never be allowed to put it back up.

The chairperson opened the public hearing. No one was present in the audience to make public comments at this time. The chairperson closed the public hearing.

Greg Honderd asked if the property owner had received compensation when the road was widened. He asked how the County would handle that and said that the road widening had made this situation more difficult.

Cliff Bloom stated the following. If the road right-of-way moved, the Road Commission would negotiate payment to acquire the property. Sometimes the property owner rejects the offer not just for the value of the property, but because it could impact the property for the future. This is a difficult issue. More important is the safety issue. If property was taken from the applicant, compensation would have been paid.

D. Dale Mohr said that when 28th Ave. was widened, the compensation was negotiated with every affected property owner. There had been difficulty with one property owner who was an attorney and he had felt he was entitled to more compensation.

Nathan Vriesman said that looking at the road right-of-way, typically it was 33 feet and that is the standard. He said that sometimes it is 43 feet. He said that it is normally bigger than 33 feet if expanded and this right-of-way isn't bigger.

D. Dale Mohr said that this was the same situation when the Township widened Baldwin.

Greg Honderd said that there is too much building and now they are dealing with traffic and site issues.

Cliff Bloom said that they are trying to put too much on the property and this started with approvals that were previously granted for compliance with less than the zoning regulations. He said that it is questionable as to whether the previously approved variances should even have been granted because this created a very crowded site.

Mrs. Nylaan said that when the road was widened, the property was bought from them.

D. Dale Mohr asked about the MDOT Chicago Dr. study and about the standard for no entrance within 75 feet of an intersection.

Steve Witte said that when the building was built, 12th Ave. went straight through.

D. Dale Mohr asked about curbing on the south side.

Joyce Weise said that this was a weird intersection.

D. Dale Mohr said that this may not stay this way as more building takes place to the west because it would be hard to access Rosewood.

Steve Witte said that Rosewood should be brought to the east, but it probably would not happen.

Joyce Weise talked about the distance from the building to 12th Ave. and how oftentimes traffic backs up.

Greg Honderd said that the site could work with two driveways.

Nathan Vriesman said that he had used an assumed size for the trucks and the sketches could change if there was a different size truck. He said that the program does a good and accurate job.

D. Dale Mohr said that there should be defined driveways, especially on the eastern portion.

Steve Witte said that there was supposed to be curbing, but there was no curbing installed. He said that pavement had been removed for landscaping that was to be added, resulting in one huge driveway and two smaller ones.

Joyce Weise said that if the easterly driveway was eliminated, a turnaround would have to be added. She said that with the island to the east and openings, trucks could back into stalls and there could be a driveway on the west end.

Steve Witte said that the previous site plan had been reviewed and approved; however, what was put in did not achieve what was intended. He said that although the intent was good, it just did not achieve the intention.

Joyce Weise said that although it may not be the applicant's best case scenario, the Township is trying to achieve limiting access with defined driveways and curbing while still allowing trucks to get in and out of the stalls.

Steve Witte said that it would not work for trucks trying to drop the cars.

Steve Nylaan said that there is a two foot overhang and they have to park back from it because ice slides off the building.

Nathan Vriesman said that another major impact is the cars that are parked in front of the building and he asked how the trucks now access the doors with the cars parked in front of the overhead doors.

Steve Nylaan said that they move the cars when they need to access the doors.

Steve Witte said that another variance request is for the two queuing spaces required in front of the overhead doors and they do not have a lot of in and out traffic. He said that there are not ten vehicles a day going in and out of the overhead doors.

D. Dale Mohr said that at Planning Commission meetings it seems that limiting access and the number of access points are important. He said that three options were provided; however, there is a fourth option which is to eliminate the western drive and have one drive between buildings one and two and to have one drive between buildings two and three.

Joyce Weise said that it would still have difficult access.

D. Dale Mohr said that there is a benefit of curbing and flexibility with the width of a bull nose.

Greg Honderd said that the County has standards for the maximum throat width.

Steve Witte said that it is either 30 ft. or 36 feet or 39 feet.

Nathan Vriesman said that there can be 42 feet for semis.

D. Dale Mohr asked about the depth and said that a bull nose would limit access.

Greg Honderd said that by having only two driveways and eliminating the driveway to the east, it would help vehicles and allow more parking.

Nathan Vriesman said that right now the whole area is used for parking and there are not really any designated parking spaces.

D. Dale Mohr said that he uses Rosewood Auto and there is parking right up to the road. He asked about the security lot.

Harold Nylaan said that they had a problem with people stealing and the security fence helps. He said that sometimes they have the big semis come in.

Cliff Bloom stated the following. Looking at the seven standards in the ordinance necessary to be met for a variance to be granted, one is not for the convenience of the applicant. There are many properties like this that have a lot going on and they have to have small delivery trucks in order to access crowded areas. In a situation like this, the ZBA should decide the number of curb cuts allowed and the applicant can come back with a proposal as to how the site is designed within the parameters. The decision of the ZBA should not totally be related to the convenience of the applicant, but road and safety issues should be paramount.

Steve Witte said that having only two driveways would not work.

Greg Honderd said that having one driveway with a wider width and bigger throat area would help.

The Zoning Administrator stated that the ZBA could determine the 60 parking spaces and the maximum number of driveways, and then let them design where those driveways and parking spaces would be.

D. Dale Mohr said that they now park in the road right-of-way and in areas that are not legal parking spaces. He asked if they could park in the road right-of-way.

Cliff Bloom said that they could park in the road right-of-way, but needed to have written permission from the Road Commission.

#100224-02 Variance #9 motion (number of driveway entrances)

Moved by Greg Honderd, seconded by D. Dale Mohr, to tentatively deny variance (VAR1001) Nylaan Body Shop, 1224 Rosewood St., in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-083, located at

1224 Rosewood St., Georgetown Township, Ottawa County, Michigan, to have four drive entrances (curb openings) and to allow only a maximum of two drive entrances as permitted in Sec. 20.4(AD)(5) which states no more than one curb opening shall be permitted for every 75 feet of frontage along any street, with a maximum of two per arterial street, based on the finding that the request does not meet the seven standards of the ordinance.

- 1. This motion is contingent upon a final motion being approved at the end of this process by the Zoning Board of Appeals finalizing all of the tentative motions made regarding all of the Nylaan variance requests and the same being approved by the Zoning Board of Appeals at the end of the process.**
- 2. This variance approval is expressly contingent upon any special land use approval (or amendment to an existing special land use permit) for the property being approved by the Township Board.**
- 3. This variance is expressly contingent upon final site plan approval for the property by the Planning Commission.**
- 4. This variance approval is expressly contingent upon the property coming into full compliance with all conditions of approval from any past variance, special land use and site plan approvals granted in the past by the Township and also complying with all other Zoning Ordinance requirements which are applicable to the property. Such compliance must occur no later than the completion of construction of the building at issue/a certificate of occupancy being issued for the completed building at issue.**

MOTION CARRIED UNANIMOUSLY.

#100224-02 Variance #5 (curbing)

Steve Witte presented the site plan and proposed curbing around specific areas.

Cliff Bloom said that there should be curbing north of the buildings and it should tie from the building to the southern curbing by building one.

Steve Witte said that there is not room for a 24 foot aisle unless it extended into the road right-of-way.

Greg Honderd said that the ordinance was designed with this standard to keep cars off the grass and that was why the ordinance was written this way.

The Zoning Administrator said that the curbing standard also requires curbing around all paved area which includes defining the driveways.

Joyce Weise suggested a hedge row along the western property line.

Harold Nylaan said that the sign was located in that area and there can't be blacktop by the sign since it has to be grass.

D. Dale Mohr said that there could only be two driveway entrances; however, the ZBA did not say where they had to be located.

Greg Honderd said that the Planning Commission has the authority in the Zoning Ordinance to decide where the driveway entrances are located.

Cliff Bloom said that the applicants still have to obtain site plan and special use approval and would, therefore, go before the Planning Commission and Township Board.

There was discussion about a hedge row or curbing along the western property line. It was noted that there was only a couple feet and there was not enough room for a hedge row.

Steve Witte said that one letter had been submitted from the Oak Warehouse and they were okay with granting the variances.

Cliff Bloom said that property can change hands and if the standard of the ordinance is important, it should be required.

Greg Honderd said that sometimes neighbors were reluctant to say how they feel and there should either be concrete curbing or the curbing should be eliminated.

#100224-02 Variance #5 motion:

Moved by Joyce Weise, seconded by Carl DeVree, to tentatively address variance (VAR1001) Nylaan Body Shop, 1224 Rosewood St., in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-083, located at 1224 Rosewood St., Georgetown Township, Ottawa County, Michigan, as follows: to require 6 inch curbing around all paved and landscaped areas north of all the buildings, including defining the driveways and along the roadway, and to have the 6 inch curbing along both sides of the six foot raised island, and to have the 6 inch curbing from the raised island connect to the Road Commission curbing at the intersection, to have 6 inch curbing in the area at the northeast corner of the “L” shaped buildings tie to the curbing to the north; and to grant a variance to waive the curbing requirement in the other areas to the south of the north faces of the buildings, a partial variance from Sec. 20.4(AD)(7) which states a raised curb of 6 inches in height shall be constructed along the perimeter of all paved and landscaped areas (with landscaped areas to be determined by the ZBA), based on the finding that the request (only in the areas noted as granted for the variance) meets the seven standards of the ordinance.

- 1. This motion is contingent upon a final motion being approved at the end of this process by the Zoning Board of Appeals finalizing all of the tentative motions made regarding all of the Nylaan variance requests and the same being approved by the Zoning Board of Appeals at the end of the process.**
- 2. This variance approval is expressly contingent upon any special land use approval (or amendment to an existing special land use permit) for the property being approved by the Township Board.**
- 3. This variance is expressly contingent upon final site plan approval for the property by the Planning Commission.**
- 4. This variance approval is expressly contingent upon the property coming into full compliance with all conditions of approval from any past variance, special land use and site plan approvals granted in the past by the Township and also complying with all other Zoning Ordinance requirements which are applicable to the property. Such compliance must occur no later than the completion of construction of the building at issue/a certificate of occupancy being issued for the completed building at issue.**

MOTION CARRIED UNANIMOUSLY.

#100224-03 – Continue the Public Hearing and Table the Final Decisions

Moved by Joyce Weise, seconded by D. Dale Mohr, to table the final decisions and continue the public hearing at the next regularly scheduled ZBA meeting on March 24, 2010.

MOTION CARRIED UNANIMOUSLY.

#100224-04 – Elect Officers

Moved by John Fanthorpe, seconded by Carl DeVree, to elect the same officers as follows: Joyce Weise, chairperson; John Fanthorpe, vice-chairperson; and Carl DeVree, secretary.

MOTION CARRIED UNANIMOUSLY.

#100224-05 - Adjournment

The meeting was adjourned at 10:50 p.m.