

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

The meeting was called to order at 7:50 p.m. by Chairperson Joyce Weise.

Members Present: Joyce Weise, Greg Honderd, Carl DeVree, D. Dale Mohr
Members Absent: John Fanthorpe
Others Present: Cliff Bloom, Township Attorney from Law Weathers; Mannette Minier,
Secretary and Zoning Administrator; and the applicants

#100324-01 - Approval of the minutes

The minutes of the regular meeting held on February 24, 2010 were presented.

Moved by Greg Honderd, seconded by D. Dale Mohr, to approve the minutes as presented with a change to page 30, #100224-02 Variance #5 motion to change the words “tentatively address” to “tentatively conditionally approve” as follows:

“Moved by Joyce Weise, seconded by Carl DeVree, to tentatively ~~address~~ conditionally approve 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...”

MOTION CARRIED UNANIMOUSLY.

#100324-02 - (VAR1002) Water of Life Church, 1294 Chicago Dr., is requesting to have a daycare center with 2,025 square feet of usable fenced and screened outdoor recreation area for 69 clients, a variance of 8,325 square feet from the 10,350 square feet required in Sec. 20.4(K)(1); (69 clients x 150 sf = 10,350 sf; 10,350 sf – 2,025 sf = 8,325 sf variance); in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, Michigan. ([site plan](#), [application](#))

The Zoning Administrator presented a review as follows.

REQUEST

(VAR1002) Water of Life Church, 1294 Chicago Dr., is requesting to have a daycare center with 2,025 square feet of usable fenced and screened outdoor recreation area for 69 clients, a variance of 8,325 square feet from the 10,350 square feet required in Sec. 20.4(K)(1); (69 clients x 150 sf = 10,350 sf; 10,350 sf – 2,025 sf = 8,325 sf variance); in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, MI.

The application states that the daycare facility is requesting to be approved for up to 69 clients. A special use permit standard listed in Sec. 20.4(K)(1) requires 150 square feet of outdoor recreation area for each client, resulting in the total requirement of 10,350 square feet of outdoor recreation area. The proposal is to have 2,025 square feet of outdoor recreation area which is a variance of 8,325 square feet or 80.4% less than required.

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		VAR1002	
Applicant		Water of Life Church	
Address		1294 Chicago Dr.	
Request		Waive outdoor recreation requirement	
Date		For March 24, 2010 meeting	
#	YES	NO	CONDITIONS (Chapter 28.11-C)
1			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	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.

The ZBA will have to determine if this is 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.

In addition to the requirement in Sec. 20.4(K) of 150 square feet of outdoor recreation area for each client in a daycare facility, Sec. 20.4(N) also has the same requirement for a Group Day Care Home where up to 12 children receive care.

On February 17, 2010 (minutes follow this review), the Planning Commission considered a request from the church to amend the Zoning Ordinance to only require the same amount of outdoor recreation area as the State requires for the licensing of the facility. With motion #100217-08, the Planning Commission determined to leave the ordinance as it currently exists because the Township has the authority to require more and to continue with the current

requirement. The minutes note that the applicants have the opportunity to request a variance if they do not have enough land.

A point to note is that the site plan shows the outdoor recreation area to the east of the building in the side yard. The application notes that there are industrial and commercial uses to the rear (south) and to the other side (west). While it makes sense to not have children playing outside adjacent to commercial and industrial uses, the current recreation area could be expanded by more than 50% towards the south. It may be appropriate to grant a smaller variance than requested since there is a possibility for expansion of the outdoor recreation area to the south which would still be away from the industrial and commercial uses.



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.

Not met as proposed. It makes sense not to locate a recreation area to the south or west of the site adjacent to industrial and commercial uses. Those areas would not be good areas for children to play. However, there does not appear to be any practical difficulties that result from exceptional, extraordinary or unique circumstances applying to the property that prevent the outdoor play area from being expanded over 50% in area directly to the south in the side yard.

The application mentions that the areas to the south and west have industrial uses and that the site has been around for many years. Neither of those reasons prevents the expansion of the area in its current location.

A smaller variance may be appropriate to allow the whole expanded recreation area to be located in the side yard to the east of the building. As it currently is shown, the area could be expanded to well over 4,050 square feet which is still providing less than 50% of the 10,350 square feet required.

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.

Appears to be met. The daycare use does not appear to have much of an impact on the adjacent areas.

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.

Appears to not be met. Other than Fair Haven Church, which received a variance to eliminate the outdoor recreation area because they were providing a preschool for only two hours at a time rather than a daycare which is not differentiated in the ordinance, other churches that have daycares, as well as other group day care homes where care is provided for up to 12 children, have complied with the area requirement for outdoor recreation area, including the following:

- 1) Cottonwood Heights CRC on Ash Drive obtained a SUP for a daycare facility in 1996 and complied with the outdoor recreation area standard.
- 2) Georgetown Christian Reformed Church on 40th Ave. obtained a SUP for a daycare facility in 1990 and complied with the outdoor recreation area standard.
- 3) Michelle Brown in Berger Estates obtained a SUP for a group daycare home in 2005 and complied with the outdoor recreation area standard.

- 4) **Toni Marion, 1439 Oakwood Dr., obtained a SUP for a group daycare home in 1997 and complied with the outdoor recreation area standard.**
- 5) **Beppe's House Daycare, 1938 Pleasantwood, obtained a SUP for a group daycare home in 2004 and complied with the outdoor recreation area standard.**

If the variance as requested was to be granted by the ZBA, it may appear as though a property right was granted to this church and not others in similar circumstances.

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.

Appears to be met.

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

Appears to not be met. The current situation appears to be a result of the daycare putting up the fence prior to obtaining all the approvals necessary from the Township and them not being aware of the requirements.

DISCUSSION

The use of a daycare in the church building appears to be a compatible use since their times of operation would be opposite. Several churches in the Township also have daycare facilities. However, most that have received approval in the past ten to twenty years appear to comply with the outdoor recreation area standard.

As noted in the review and in the applicant's narrative, and shown in the pictures, it does not appear to be appropriate to locate the recreation area in the rear yard to the south of the building or in the side yard to the west of the building adjacent to industrial and commercial uses. In those locations, the children could possibly be subject to noise, odor, fumes and dust from the commercial and industrial uses.

However, nothing substantial appears to prevent the expansion of the outdoor recreation area in its current location. As depicted in the site plan, the area could be more than doubled in size on the east side of the building without extending into the drive area or being close to the industrial operation. After raising the question about expanding the area, the applicants provided an emailed answer that a second door to the sanctuary exists along the wall in this area and that there were financial constraints. The doorway to the sanctuary would not seem to present a situation as long as a person could exit the recreation area and the gate provides an exit. Also, financial aspects should not be part of the variance consideration. If this would present a financial burden, an opportunity exists for the site to have fewer clients which would reduce the amount of outdoor recreation area required.

Expanding the recreation area to at least twice its size (from 2025 to 4,050 square feet) would reduce the amount of variance requested from over 80% to about 60%. The variance request would then be to have no less than 4,050 square feet of outdoor recreation area, a variance of 6,300 square feet from the required 10,350 square feet. By reducing the variance amount and increasing the size of the

recreation area, it appears possible that the determination could be made that the standards are met due to the following reasons:

- 1) The public interest would be served and the spirit of the ordinance observed since the recreation area would closer meet the amount in the SUP standard.
- 2) The use is allowed.
- 3) The practical difficulty results from the unique situation of the daycare site being located adjacent to industrial and commercial uses that could subject the children to noise, odor, fumes and dust if the area was not located away from those uses on the east side. The increased recreation area would be located away from these detrimental impacts.
- 4) The use will not detrimentally affect the adjacent sites.
- 5) The property right could be determined to allow a daycare in the HS district which is permitted in the ordinance and the use would be physically able to closer meet the SUP standards.
- 6) There does not appear to be nonconforming situations present on the site.
- 7) Although having the fence previously constructed in the current location may have necessitated the variance request for the current amount, if the area was expanded, the situation could then be determined to be necessitated by the location of the site in proximity to the industrial and commercial locations.

Steve Witte, Nederveld Associates, represented the applicant and presented the request, including the following. In the application, the number of future clients was listed as 69 and the determination has been made to stick with a maximum of 50 which reduces the requirement from 10,350 square feet to 7,500 square feet of outdoor recreational space. The children are not all taken out at one time. He recommended that 2,025 square feet of outdoor recreation area is more than sufficient for their needs. The State has already approved the area. A home daycare only has 6 to 8 children in a rear yard which is sufficient. The other examples are larger churches on larger sites. He has worked on several daycare facilities, including Appletree which had less outdoor recreation area than 150 square feet for each client because it was a PUD and a variance was not needed. About 75 square feet per child was reasonable since they don't let all out at one time. All 50 will not go outside at one time. Other communities, such as Byron Township and the City of Grand Rapids, follow the State requirements. The City of Wyoming requires only 100 square foot per child. The children will be brought out in small groups of 10 to 13 at a time and more space than is required for 13 is provided. All the seven standards have been addressed. The site is existing and is adjacent to industrial uses. A wall will screen the area and provide a safe area. Not all the children will be taken out at one time. For standard #5, the daycare facility is allowed to operate in the HS district. For standard #7, the applicant did not necessitate the request because the building was constructed in the past. The applicant did construct the fence because they were not aware of the special use standards. There are two doors on the building in this area. One door is to the sanctuary and the other door is for food storage and the areas to access the doors could not be blocked off for safety reasons. If the fence was extended 23 feet, a total of about 3,175 square feet could be provided without blocking off the doors.

D. Dale Mohr asked if the church leased the property behind the building to Kerkstra to store items or if there was some type of agreement. He said that the point was what, fumes and noise would bother the children?

Steve Witte stated the following. Chemicals were not stored on the site, but there were large existing buildings for Geocon and Kerkstra Precast. In five to ten years, who knows what uses may go in the adjacent sites. They do not want to put the recreation area in the rear in case more intense uses go

there. The recreation area fits more to the east of the building because they would have to fence more area to access a recreation area in the rear of the building.

D. Dale Mohr asked if the reason for the location was due to financial aspects, such as the loss of the lease for storage.

Steve Witte said that it would be better to have the kids play away from the industrial uses.

D. Dale Mohr asked what the State requirements were for outdoor play areas.

Steve Witte said that he thought that the State required about 50 square feet per child and the State has said that the daycare has sufficient space.

D. Dale Mohr said that the calculation with the old numbers was about 33 square foot per child and with the new numbers there was about 66 square foot per child. He said if the whole area was used, there would be over 70 square foot per child.

Steve Witte said that if it was extended to the north it would calculate to 63.5 square feet per child.

Joyce Weise wondered if there was a way to fence the area in and leave a pathway to the doors.

Steve Witte said that it was possible, but they would rather have it squared off.

The Zoning Administrator explained that the Planning Commission had recently discussed revising the special use standard in the ordinance to allow less square footage for the recreation area, but unanimously approved a motion to leave the ordinance the same because the Township had the right to require more and other daycare facilities had provided the amount as per the ordinance requirement.

Kelly Keur, Daycare Director, said that the recreation area would be part cement pathways for trikes and bicycles, along with a large space with wood chips and a garden. She said that half of the food would go to the food pantry and half would go to the church. She said that the children liked to play in the dirt and pull weeds.

Joyce Weise said that a typical backyard was about 75 by 75 feet and that is sometimes not big enough for three kids.

Kelly Keur stated the following. There would be no large scale equipment and only smaller little tykes type of things. The children would play and dig in the dirt, along with painting rocks. The parents were satisfied. They would not bring out 2 to 3 year olds at the same time as 10 to 12 year olds. One to two teachers would accompany the group depending on size. They don't plan to take all the children out at once.

Cliff Bloom said that although the fence was put up unknowingly, the ZBA should view it as if it wasn't there.

The chairperson opened the public hearing. No one was present to speak on this topic. The chairperson closed the public hearing.

D. Dale Mohr asked if the children in the daycare used the sanctuary door and was told that the people on Sunday use the door.

D. Dale Mohr asked if the pantry door was lockable and if these doors provided the only access.

Steve Witte said that the door was lockable and there were doors in the front of the building.

D. Dale Mohr asked how the number of 150 square feet was obtained and how it could be defended. He said that it was an arbitrary and capricious number.

Joyce Weise said that it is not the job of the ZBA to change ordinances, but to enforce them as written. She said that a list of others had been provided who had come up with the required amount.

Cliff Bloom stated the following. Even if the ordinance is unreasonable, the issue before the ZBA is only to determine if the request meets the standards required for a variance to be granted. The ZBA could make a recommendation to the Township Board or Planning Commission to change the ordinance. He said that if the variance standards are not met, the ZBA cannot grant the variance.

Greg Honderd said that the Planning Commission had not looked at a specific site plan when they recently discussed possibly revising the ordinance. He said that the reason the Planning Commission did not want to change the ordinance was because every other daycare applicant had met the ordinance. He said that the applicant should come to the Planning Commission with the correct number of clients that they could provide the outdoor recreation space for and then appeal to the Planning Commission to look at the ordinance. He said that it would be a while before the daycare reached the projected limit of clients anyway.

Joyce Weise asked if they should go to the Planning Commission.

Greg Honderd said that the applicant should draw up a plan with however much outdoor recreation space they wanted and apply for the corresponding number of clients that met the ordinance for the special use permit. He said that maybe they could ask the Planning Commission to take another look at the outdoor recreation size requirements in the special use standards.

Steve Witte said that Appletree had 75 square feet per child and the other examples provided in the review were large churches on multiple acre sites. He said that this is a pre-existing small site and if they provided the recreation area in the whole side yard they would have about 5,000 square feet.

Joyce Weise clarified that Appletree was in a PUD with different regulations.

Cliff Bloom said that if the ZBA decided to grant a full or partial variance, they could attach a condition allowing the applicant to only take 10 to 13 children outdoors at a time. He said that he questioned the lesser amount for this reason because the situation could change.

The Zoning Administrator stated that any conditions related to the number of children being taken out at once would be hard to enforce since there would be no monitoring.

The calculations were provided that if they had a maximum of 50 clients, the amount of outdoor recreation space required to be provided would be 7,500 square feet and if 5,000 was provided, the variance only needed to be for 2,500 square feet.

Moved by D. Dale Mohr, seconded by Greg Honderd, to approve variance (VAR1002) Water of Life Church, 1294 Chicago Dr., to have a daycare center with approximately 5,000 square feet of usable fenced and screened outdoor recreation area for a maximum of 50 clients, a variance of approximately 2,500 square feet from the 7,500 square feet required in Sec. 20.4(K)(1) for 50 clients in a (HS) Highway Service Commercial district, on a parcel of land described as P.P. # 70-14-23-100-054, located at 1294 Chicago Dr., Georgetown Township, Ottawa County, Michigan; based on the finding that the request meets the seven standards of the ordinance; and with the following conditions:

- 1. This variance approval is expressively 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.**
- 2. This variance is expressively contingent upon final site plan approval for the property by the Planning Commission.**
- 3. This variance is expressively contingent upon the fencing and screening being provided as per the special use standard in Sec. 20.4(K).**

Yeas: D. Dale Mohr, Carl DeVree
Nays: Greg Honderd, Joyce
Absent: John Fanthorpe

TIE VOTE (considered to not be a vote)

D. Dale suggested that another ZBA member come up with a substitute motion.

Greg Honderd said that the intent is okay, but the process is not right. He said that the Planning Commission needs to look at changing the ordinance to look at a smaller scope and that was his reason.

Joyce Weise asked if the Planning Commission would look at the issue.

Greg Honderd said that either this could be denied or left on the table for the fifth member of the ZBA to return at the next meeting.

Cliff Bloom said that if the request was turned down, they could not reapply for a year. He said that the ZBA could either wait for the fifth member or else modify the motion.

Joyce Weise said that they could table the request and go back to the Planning Commission.

Greg Honderd said that they could come to the Planning Commission for their special use permit showing 5,000 square feet of outdoor area with the corresponding number of clients allowed as per the ordinance as the basis for asking the Planning Commission to revisit the issue. He said that by the time they get up to 50 kids, the ordinance change could be in place. He said that they should show the bigger area and proceed with the special use application.

Cliff Bloom asked the applicant for their preference.

Steve Witte said that they would wait for the 5th member of the ZBA because they wanted action on the 50 clients.

Moved by Greg Honderd, seconded by Carl DeVree, to table the request.

MOTION CARRIED UNANIMOUSLY.

Cliff Bloom asked the applicant if the 5th member of the ZBA was brought back for reconsideration, would the applicants be okay with him just reading the minutes since he has not heard the discussion today.

The applicants agreed that they would be okay with the 5th member of the ZBA just reading the minutes since he was not present at this meeting to hear the discussion.

Joyce Weise said that the job of the ZBA was not to rewrite the ordinance.

#100324-03 – (VAR1001) Unfinished Business

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.

Attachments:

[proposed site plan](#),

[existing site plan](#),

relevant pages of MDOT M-121 [Chicago Drive Corridor Access Management Plan](#),

[letter](#) from Ottawa County Road Commission,

[picture of area supposed to be landscaped](#),

[picture of business using road right-of-way](#),

[picture of parking in road right-of-way](#),

[raised area](#) supposed to restrict entrance

[application](#)

[letter](#) from Township Engineer dated March 4, 2010

The Zoning Administrator presented a review as follows.

(VAR1001) Nylaan Body Shop, 1224 Rosewood St., is requesting multiple variances 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.

Please note the [review](#) for the last meeting and carefully read the [February 24, 2010](#) minutes. For all the appeals of interpretations/determinations by the Zoning Administrator (items 1 and 2, above), the ZBA has already concurred with the Zoning Administrator's determinations and made final decisions regarding these matters at the last meeting (none of those motions were tentative). Therefore, the ZBA does not have to deal with these appeals matters again.

The following tentative motions (regarding Variances #3, 8, 9, and 5) were made at the last meeting.

#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).

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 9as outlined in the Zoning Administrator's findings and report). 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 9as outlined in the Zoning Administrator's findings and report). 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.

#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 (as outlined in the Zoning Administrator's findings and report).

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) motion:

Moved by Joyce Weise, seconded by Carl DeVree, to **tentatively conditionally approve** 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 (as outlined in the Zoning Administrator's report and findings).

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.

The ZBA tabled the final decisions (and the tentative decisions on the remaining matters) and moved to continue the public hearing at the next regularly scheduled ZBA meeting on March 24, 2010. The text that has been struck-through represents variance requests that have already tentatively been addressed.

The ZBA began discussion of unfinished business.

#100324-03 – Variance request #4, 6 and 10

CONSIDERATION OF EACH OF THE REQUESTS-VARIANCE #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 variance requests were reviewed together since each one is basically dependent upon the others.

The ZBA already tentatively determined at its last meeting to limit the total number of driveways to two. The ZBA further tentatively determined 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.

The review provides discussion points to consider and suggestions for a determination of whether or not the variance 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 compromise 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 were to be granted as requested, this property would have rights that NO other properties in the vicinity have. The other sites have not been overdeveloped to the extent that their uses no longer 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.

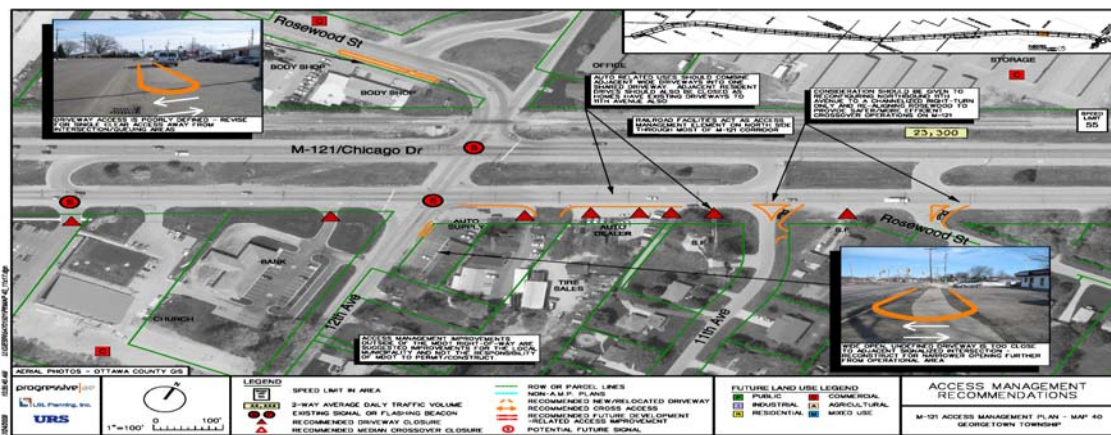
DISCUSSION

Note the [letter dated January 21, 2010](#) from the Road Commission which contains observations and recommendations. The letter states “The OCRC would like to see modifications 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. **Implementation of the recommendations herein will also improve traffic flow now and in the future.**”

Also, note the relevant pages of MDOT M-121 [Chicago Drive Corridor Access Management Plan](#), which references this site as an area of concern, particularly having “poor intersection-to-driveway spacing” and notes that these commercial driveways are within the functional area of the intersections. The study recommends a more defined location of ingress/egress further away from the functional areas of adjacent intersection. The study provides the key reasons for better access management as follows: 1) reduces crashes and **crash potential**; 2) **preserves roadway capacity**, traffic operations and the useful life of roads; 3) **decreases travel time and congestion**; 4) improves access to and from properties; 5) ensures reasonable access to properties (not necessarily direct access or multiple driveways; 6) improves environment for pedestrians and bicyclists; and 7) maintains travel efficiency and related economic prosperity.

The Township Engineer submitted a [letter](#) dated March 4, 2010 which provides documentation that the site with curbing and limited driveway entrances would be able to accommodate the size of truck currently used by the business. The letter also states that the Township Engineer concurs with the safety related aspects presented by the Road Commission.

Evidence has been provided from MDOT and the Road Commission to substantiate the fact 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).



The three properties to the west all have defined driveways and landscaped areas in the front yard setback areas. Why should this property be allowed to have unlimited access to Rosewood with no landscaped areas when these other 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 since the ZBA already approved a tentative motion to limit the number of driveways to two and to require curbing to the north of the buildings.

1. The ZBA could consider the variance requests relative to driveway distances from intersections and from other driveways (variance request #10).
2. The ZBA could consider the requests to waive the 30 foot landscaped area (variance request #4).
3. The ZBA could consider the request to reduce the number of trees to be required in the landscaped area (variance request #6).

Cliff Bloom clarified that the previous variance motions that were approved were tentative so that they could be changed if needed after further discussion takes place (and before a final overall motion) and that the public hearing had been adjourned at the last meeting. He said that this is a very complicated request with appeals and with variance requests.

The Zoning Administrator presented a [letter from the Township Engineer](#) and a [letter from the Road Commission](#), both referencing safety concerns with the need for a redesign of the site.

Attorney Don Nicewander, 5854 Gleneagle, spoke on behalf of the applicant. He stated the following. He would not address the specifics, but he would stipulate noncompliance with Zoning Ordinance because this is how the site currently exists. The Nylaans were wrongfully denied a building permit because the site plan was previously approved eleven years ago and the site is nonconforming. They are not changing the site, but are only trying to reconstruct on the exact same spot. This should be allowed as per Sec. 27.7. Sec. 27.4 addresses nonconforming structures damaged by more than 50% and a building permit should be granted, but was not. The number one building was not damaged.

Cliff Bloom interrupted and said that although Don Nicewander had the right to continue, he wanted to make the record clear that those interpretations and appeals had already been determined by the ZBA at the last meeting and those motions were final decisions.

Don Nicewander said that he understood but wanted to state his client's position for the record. Mr. Nicewander also stated the following. He simply knows what his client's position is and wants it recognized. He agrees that this property enjoys certain rights that the other properties in the area don't and the statute protects the nonconforming rights. Those rights to continue buildings cannot be denied. The Township is acting wrongfully by denying the building permit. Mr. Nicewander then thanked the ZBA and left the meeting.

Steve Witte stated the following. He wanted to provide the history since the last meeting. He met with Harold Nylaan numerous times since the last ZBA meeting when several of the variance requests had tentatively been completed. With the curbing requirement in number nine, the Nylaans simply could not comply because it would not work. He did not want to show curbing because it will not work for the Nylaans. They need the eastern drive entrance. The comment made at the last meeting about not being certain of what took place in 1999 is not correct. It is relevant that the Township Board and Planning Commission were fully aware of the situation and approved the site.

Cliff Bloom said that it is not possible to reconstruct what occurred ten, eleven or twelve years ago without bringing in the people who were involved. The ZBA already rendered a legal interpretation and determined that the ordinance requirements were not waived and they still had to comply. The ZBA already decided the appeals at the last meeting.

Steve Witte stated the following. He was at the relevant meetings and he provided the minutes of September 15 from eleven years ago which noted that other variances were granted. He said that Don VanDyke, the former building official, reported at the meeting about the meeting that took place where the driveway and curb cuts were discussed. He also provided correspondence from the Road Commission who reviewed and approved the plan. The property was inspected and given a certificate of occupancy. He disagreed with the statement that no one could be certain what took place back then because he was there and he knows what took place. The Township approved the plan with the exception of the curbing around the outer area. If this one parcel were divided into three parcels, they would be allowed up to six drive entrances. The businesses to the west have less frontage. It is hard to believe that the Township Board and Planning Commission don't have the authority to approve this. The drive entrances were specifically discussed. There were only two and the Planning Commission and Township Board wanted four entrances. Landscaping is shown on the submitted plan.

The Zoning Administrator stated that although the ZBA already determined the appeals and interpretations that the standards were relevant, the special use standards were again now relevant totally unrelated to the past because the site had changed. Chapter 19 requires site plan approval for the reconstruction of a building and the special use permit is now either being amended or the applicant is applying for a new special use permit. The applicant did not question that fact and admitted that they understood that they had to have either a new or amended special use permit. Consequently, the past is really irrelevant since all of the standards *now* are pertinent and apply.

Steve Witte asked for an interpretation of needing a special use permit if the site is updated. He said that if they remove the pavement and provide curbing, they could also say that they are just rebuilding the building.

Cliff Bloom stated the following. The ZBA already decided the interpretations and appeals related to this. It does reopen the special use permit if this building is changed including reconstructed. The Nylaans had a full special use permit and, if not lawfully nonconforming when that portion of the building burned down, that all would come into play again because those elements are affected by this building. For example, there is storage behind the third building and that is not affected by this second building. So that would not come into play again. However, many other things do come into play that are related to the middle building, such as traffic concerns, the number of driveways and curbing.

The Zoning Administrator said that they could discuss the 30 foot front yard requirement after they discuss the 75 foot requirement from an intersection.

#100324-03 – Variance request #10

Steve Witte stated the following. This would matter if the whole area was allowed to remain open as it currently exists; however, now that they were required to close the whole area off with curbing, the 75 foot requirement does not matter. Landscaping has been provided with 25 foot spacing. If driveways are eliminated, the landscaping would just move together. He recommends variances to require a 0 foot landscaped area in front of the first building, a variance of 30 feet; 5 feet in front of the second building, a variance of 25 feet because four feet is in the right-of-way; and 14 feet in front of the west building as opposed to the 30 feet. If the tentative motion addressing variance request for #5 for the 6 inch curbing remains, they lose the flexibility.

The Zoning Administrator said that there should be no concrete within the 6 foot curbed area in front of the eastern building and that it should be grass or some other planting ground cover that would be approved by the Road Commission.

Greg Honderd said that they should address the 75 foot standard before they go on.

The Zoning Administrator stated that the applicant has already stated that it is a moot point and would be okay if this was denied.

The applicant clarified that this was irrelevant and was okay if the request was denied.

The chairperson opened the public hearing.

Denise Garn, 2143 Sandcrest St., stated the following. Driving onto the Nylaan property, she drives over the raised concrete with no problem. She knows what they are saying, but she had no problem driving over the concrete with 5:00 p.m. traffic.

Harold Nylaan stated the following. If he is required to put the curbing in front of the main building, it would put him out of business. It can't happen. This situation was not his fault because the road was widened. Thirty-five years ago this was legal and his land was taken. It is not legal to require him to put the curbing in because it will put him out of business and he will have to close his doors.

Joyce Weise asked why installing the curbing would put him out of business.

Harold Nylaan stated the following. It has been this way for 35 years and this is how his customers access his property. People have been driving straight from 12th Ave. and over the raised concrete to access his property for years. They won't want to drive farther if there is a curb there. The curb would make it more confusing for his customers. He is fighting for the business for his kids, not himself.

D. Dale Mohr asked if the Nylaans were compensated when the Road Commission took the property.

Harold Nylaan said that yes, they were compensated, but not much, and he did not argue with them.

Joyce Weise said that she understood that this was emotional and the ZBA did not want to put them out of business, but the ZBA was just trying to do their job. She said that she could see how this may interfere with how business flows, but asked what about the curbing would make the day-to-day operation not work.

Judy Waterman, 6323 Baldwin, stated the following. She works in the office three days a week and would have to deal with customers if they have to go around the site. She didn't see how anybody could go around to find the office. They have been here since 1975. If they are required to put the curbing in, it would be inconvenient for customers and wreckers that bring vehicles in. The guys would have to maneuver and damaged cars do not move well. If they have to move the office, everything would be changed because people would come in confused. They would have to put up a sign and they would need a permit for that and the Township would probably require a variance.

Steve Witte stated the following. The Township engineer provided information that the wreckers could maneuver with the curbing; however, he is familiar with the computer program and it is used for approximation. The flatbed truck is 37 feet wide and this is not the way it is. Commons sense shows that a 37 foot long wrecker could not pull in. He is familiar with the wreckers and doesn't see how this would work.

Cliff Bloom said that the ZBA has already tentatively decided this issue. Variances do not go just to the convenience of the property owner, but rather the conditions of the land. He said that there are lots of small sites with different uses where people have to make the use fit the land.

Denise Garn said that if she comes in to park, she is not sure if there will be enough room.

Jake Bouwman, 6550 Cherrywood, said that the driveways were discussed and it would be detrimental to go further and it was a messy situation. He said that businesses in Zeeland were required to put in a lot of trees and it is a mess.

The chairman closed the public hearing.

#100324-03 – Variance motion #10:

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 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, based on the finding that the request does not meet the seven standards of the ordinance as outlined by the Zoning Administrator.

D. Dale Mohr said that he has used Nylaan Body Shop and Rosewood Auto, too, and there is more like one continuous driveway.

MOTION CARRIED UNANIMOUSLY.

#100324-03 – Variance request #4 and #6:

- 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.**
- 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.**

It was noted that the ZBA should determine the minimum amount of landscaped area and then the number of trees within the landscaped area.

The Zoning Administrator clarified that Steve Witte was correct in determining the amount of landscape area in front of the eastern building to be zero because the curbed area, even if greenspace, is within the road right-of-way and outside of the required 30 foot area.

Cliff Bloom said that even if the 6 foot islands were grass, there could be no trees there since it was within the road right-of-way.

The Zoning Administrator stated that this would be a difficult determination since a revised site plan had not been submitted showing a layout that would work. She said that the ZBA could make four separate determinations, including the landscaped area in front of the eastern building, in front of the middle building, in front of the western building and to the west of the western-most driveway.

Cliff Bloom said that since the ZBA does not know any new site layout, it may be hard to determine and a different layout may make a difference in what they determine.

Greg Honderd suggested that the ZBA could determine the amount of landscaped area that should be provided between the driveways, wherever they are to be located and allow a 0 foot landscaped area in front of the eastern building.

Steve Witte said that the ZBA could use the initial plan that was submitted.

Greg Honderd said that the building could be cut down.

Joyce Weise said that there could be 12 feet in front of the middle building.

D. Dale Mohr said that the land where the little notch is would be 75 feet.

Steve Witte said that a 30 foot driveway is standard and could go up to 36 feet.

The Zoning Administrator said that the ZBA should not use the existing plan since it was not revised to reflect decisions already made by the ZBA.

Greg Honderd said that the ZBA could make tentative motions at this meeting and make final motions at the next meeting.

Mrs. Nylaan said that they have been there for 35 years and have never had a complaint. She said that with the economy the way it is, the Township is killing them.

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

Greg Honderd said that there is too much building on the site and it just does not work. He said that even though people sometimes get upset, the ZBA treats all people fairly and that when one variance is granted, it necessitates more variances.

D. Dale Mohr clarified that the variance stays with the property.

Cliff Bloom said that the variance stays with the property as long as the use remains the same.

Greg Honderd said that they could have two driveways each 36 feet wide to facilitate trucks maneuvering onto the site.

The Zoning Administrator explained that she had requested that the applicants submit a revised site plan that reflects the decisions already made by the ZBA in order to determine what was necessary for the site layout in regard to the remaining variance requests; however, the revised site plan that was submitted only showed a nonexistent sign removed. She said that this makes it more difficult for the ZBA to determine what is necessary to make the site work with the variances that have already been determined.

Greg Honderd stated the following. One variance perpetuates other variance requests and each one keeps making the site harder to work with, creating a snowball effect. This site is overbuilt. The best the ZBA can do is to treat everyone fairly.

The ZBA questioned the Zoning Administrator as to how much, if any, of a variance would be needed for the 30 foot landscaped area in order for the site to work and she replied that she did not know since a revised plan with a revised layout had not been submitted.

Cliff Bloom stated the following. The applicants had the option to submit a revised plan. They did not. An option is for the ZBA to deny the variances, but if they deny, the site may not work. The applicants could apply for an amendment to the motions. The recommendation is to make a final decision tonight because the applicants had the opportunity to submit a revised plan.

Joyce Weise questioned the seven parking spaces in front of the middle building.

The Zoning Administrator cautioned them to not use the current plan because it did not reflect the decisions already made by the ZBA.

Greg Honderd said that there should be a complete variance for the area in front of the eastern building, so they only had to determine the center and western building. He said that he knows that the Township wants some greenspace, but the question was how much.

Steve Witte said that with 16 feet there was some room to play with the design for the driveways. He said that it would be useful to know what fits.

Cliff Bloom said that they could address from east to west.

Steve Witte said that there could be four feet in the middle to accommodate a 24 foot wide drive aisle, with 0, 4, 14 and 12 feet with none of that in the road right-of-way. He said that there could be trees, just not in the road right-of-way.

Cliff Bloom said that there could not be trees in the 0 foot area in front of the eastern building because it was in the road right-of-way.

Joyce Weise opened the public hearing. A member of the audience said that she was confused and another member of the audience said that the trees would tear up the road.

Joyce Weise said that they just had to come up with the right variety.

Harold Nylaan said that he had agreed to some elements in the first plan except for the curbing in front of the eastern building. He said that he would not put it in and would not agree to it.

The chairperson closed the public hearing.

#100324-03 – Variance motion #4 and #6:

Moved by Greg Honderd, seconded by Joyce Weise, to tentative approve 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 the following:

- 1) Eastern portion of the site (in front of the eastern building) - to have a 0 setback, a variance of 30 feet from the 30 foot setback required in Chapter 24 footnote (k) which states except for necessary drives and walks the required front yard for a depth of thirty feet shall be landscaped and shall not be used for parking, loading or accessory structures, with the condition that the space within the curbed four foot area (within the road right-of-way) shall have low vegetation meeting Ottawa County Road Commission recommendations.
- 2) Middle portion of the site (in front of the middle building) - to have a 5 foot setback, a variance of 25 feet from the 30 foot setback required in Chapter 24 footnote (k) which states except for necessary drives and walks the required front yard for a depth of thirty feet shall be landscaped and shall not be used for parking, loading or accessory structures, with the condition that the space within the curbed road right-of-way area shall have low vegetation meeting Ottawa County Road Commission recommendations.
- 3) Western portion of the site (in front of the western building including the area along the western property line) - to have a 12 foot setback, a variance of 18 feet from the 30 foot setback required in Chapter 24 footnote (k) which states except for necessary drives and walks the required front yard for a depth of thirty feet shall be landscaped and shall not be used for parking, loading or accessory structures, with the condition that the space within the curbed road right-of-way area shall have low vegetation meeting Ottawa County Road Commission recommendations.
- 4) To have 10 trees in the front setback landscaped area with the types and sizes of the trees to meet ordinance requirements (trees may be clustered), a variance of 11 trees 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.

Based on the finding that the requests meet the seven standards of the ordinance (as outlined by the Zoning Administrator).

With the following conditions:

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.

It was noted that the reason for the variance approvals were due to the existing site having the four curb cuts reduced to two and the variances would allow for traffic flow within the site.

MOTION CARRIED UNANIMOUSLY.

#100324-03 – Variance request #7 and #11:

CONSIDERATION OF EACH OF THE REQUESTS-VARIANCE #7 and 11

- 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.**
- 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.**

The Zoning Administrator presented a review as follows and stated that this type of use may be different than the type of use that the queuing requirement in the ordinance was drafted to address. She said that a previous variance had been granted to allow 60 legal parking spaces.

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		Parking and queuing spaces	
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			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			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 standards for the storage and parking of vehicles so as to not be detrimental to the public or neighboring sites. The public interest would be detrimentally affected if parking was allowed to encroach upon the roadway or to inhibit access to the site if vehicles did not fit on the site without spilling over to the roadway. As long as curbing is added to prevent the vehicles from spilling over upon the roadway, the business itself would be the only entity affected if there was not enough parking. A condition of approval could be added that the spirit of the ordinance would be met and the public interest served as long as parking is totally constrained to the parcel and does not encroach upon the public road. Another condition of approval could be to require written permission from the Road Commission if any aisle ways or parking that encroaches upon the right-of-way (not the roadway itself).

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.

The ZBA should determine if this standard is met. The practical difficulties likely relate to the fact that the site has been overdeveloped and the parcel is not large enough to contain the use including the needed amount of parking and vehicle storage spaces.

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 ZBA should determine if this standard is 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 parking from spilling out into the roadway. If parking is not constrained to the parcel and constraints are not install to prevent parking 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. Currently the neighboring properties have landscaping and defined driveways, along with uses that are contained on their own sites.

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.

The ZBA should determine if this standard is met. The variance appears to be necessitated by the fact that the site is overdeveloped and the use has grown to a state where it can no longer be contained on the parcel.

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. The amount of parking spaces (or lack of parking spaces) may only negatively impact the operation rather than the neighboring sites or the roadway as long as the curbing and defined driveways are required. If the curbing is added, it should inhibit illegal parking in the right-of-way. The vehicle queuing may not be relevant for the type of business conducted on the site.

Steven Witte stated the following. This type of use does not have much in and out traffic. If the driveways are eliminated, the site will need access and areas will have to be blocked off with designations for no parking so that vehicles can turn around. Vehicles can pull in and back out. The site could handle 55 parking spaces if the Nylaans decide to move forward. He looked at the past meeting minutes when the prior variance was granted and the condition was that the 60 parking spaces were required to be legal. He did not know if parking spaces in the right-of-way were considered to be legal because if that was the case, there would not be as many parking spaces as initially counted.

Joyce Weise confirmed the 12 foot handicapped space.

Cliff Bloom clarified that the western building was leased to another company.

Steve Witte said that Rosewood Auto conducted mechanical and auto repair and that the Nylaan Body Shop did body work.

In response to a question, Steve Witte answered that the parking lots were pretty full.

The Zoning Administrator asked if the applicant had looked at adding parallel parking spaces along the building and making one aisle one-way as had been presented as an option.

Steve Witte said that it would not work well because vehicles would need to turn around at the eastern end.

Greg Honderd said that every time a variance is given, more variances are needed to make the site work and the applicant should design the site with appropriate uses to make the parking work on the site.

In response to a question, Steve Witte said that the use of warehousing was not conducted on the site.

In response to a question, the Zoning Administrator stated that she had not calculated the overall parking requirement for the site as per the ordinance standard due to the fact that a previous variance had already been granted for the site to have 60 legal parking spaces.

Greg Honderd said that the variance should not be granted and they should try to make the site work.

The chairperson opened the public hearing. No one from the audience make public comments at this time. The chairperson closed the public hearing.

Steve Witte said that 60 parking spaces would not fit and the site could only accommodate 55 spaces.

Joyce Weise clarified that the number of required spaces was based on the use of the building.

Greg Honderd said that maybe only 55 spaces would be required.

Steve Witte said that 67 parking spots would be required as per the site layout.

Greg Honderd asked if all the service bays were used.

Steve Witte said that the ones used were not specified.

There was discussion about what was listed in the public notice that was published.

There was discussion about the number of parking spaces and the applicant said that they currently had enough parking spaces on the site.

Harold Nylaan's daughter stated that they have enough parking spaces and the need was met.

Steve Witte said that the Road Commission was looking for the curbing and would stand 100% behind the Township.

Cliff Bloom said that the word "legal" parking spaces came from a past condition from a previously granted variance. He said that if parking spaces were in the road right-of-way, written permission should be obtained from the Road Commission.

#100324-03 – Variance motion #7 (parking spaces):

Moved by Greg Honderd, seconded by D. Dale Mohr, to tentatively deny Variance (VAR0911) Nylaan Body Shop, 1224 Rosewood St., 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, 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, for the reasons and findings listed in the Zoning Administrator's report.

MOTION CARRIED UNANIMOUSLY.

#100324-03 – Variance motion #11 (queuing spaces):

Moved by Greg Honderd, seconded by D. Dale Mohr, to approve Variance (VAR0911) Nylaan Body Shop, 1224 Rosewood St., to have no vehicle queuing spaces 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, 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 (based on the Zoning Administrator's report and findings, and with the following conditions:

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 expressively 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 expressively contingent upon final site plan approval for the property by the Planning Commission.
4. This variance approval is expressively 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.

#100224-04 – Final Motion

Moved by D. Dale Mohr, seconded by Joyce Weise, to adopt and finalize all of the tentative decisions made by the Zoning Board of Appeals regarding the Nylaan case at its February 24, 2010 and March 24, 2010 meetings with regard to variance requests #3, 4, 5, 6, 7, 8, 9, 10 and 11 (Case Number VAR1001), with an amendment to variance request #5 for the raised curbed area to be 4 feet rather than 6 feet, and must be landscaped with vegetation as per Ottawa County Road Commission recommendations, including incorporating the findings and conditions of those tentative decisions, together with the following conditions and requirements:

- A. The applicant must also obtain all required amendments to the existing special land use and site plan approvals governing the property from the Planning Commission and Township Board.**
- B. There must be full compliance with all conditions and requirements of all variances, special land use approvals and site plan approvals granted in the past regarding this property.**
- C. The uses, structures, parking areas, drives, curbing, landscaping and other matters on the property must fully comply with all requirements of the Zoning Ordinance.**
- D. Full compliance with the Zoning Ordinance and all conditions and requirements of past variances, special land use approvals and site plan approvals must occur no later than the completion of the construction of the building at issue or March 23, 2011, whichever occurs sooner.**

It was noted that every ZBA member has empathy for the applicants, but must follow state law and the Zoning Ordinance.

MOTION CARRIED UNANIMOUSLY.

#100324-04 - Adjournment

Moved by Carl DeVree, seconded by Greg Honderd, to adjourn the meeting at 11:00 p.m.

MOTION CARRIED UNANIMOUSLY.