

**CITY OF BRIGHTON  
ZONING BOARD OF APPEALS  
MINUTES  
February 12, 2015**

**1. Call to Order**

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

**2. Roll Call**

David Chaundy – Absent  
Russ Gottschalk – Absent  
Doug Angst – Present  
Ricci Bandkau - Present  
Dave Senak – Present  
David McLane – Present (arr. at 7:40 p.m.)  
Alicia Urbain – Present  
Barbara Curtis (alt.) - Present  
Amy Cyphert  
Lauri French  
Audience – 10

Motion by Board Member Urbain, seconded by Senak, to excuse the absences of board members Chaundy and, Gottschalk. **Motion carried 5-0-2.**

Motion by Board Member Urbain, seconded by Bandkau, to excuse the absence of David McLane until he arrives to the meeting. **Motion carried 5-0-2.**

**3. Approval of the January 8, 2015 Meeting Minutes**

Motion by Board Member Senak, seconded by Urbain, to approve the meeting minutes of January 8, 2015. **Motion carried 4-0-2-1, with two absences (Chaundy, Gottschalk) and one abstention (Curtis).**

**4. Approval of the February 12, 2015 Meeting Agenda**

Motion by Board Member Bandkau, seconded by Urbain, to approve the February 12, 2015 agenda as presented. **Motion carried 4-0-3.**

**Old Business**

**New Business**

- 5. Karen Gill, 822 E. Grand River, Parcel ID (18-31-204-001)**, is proposing a ground sign 6 feet wide by 5 feet tall, a total sign area of 24 square feet per side. The proposed ground sign will have an animated, full color LED digital message center component. **Article IV, Section 66-91 (a)(14)(a)** states no sign shall be permitted which is animated by means of flashing, scintillating, blinking or traveling lights or any other means not providing constant illumination (unless specifically permitted in special sign districts). A variance to allow an animated full color LED digital message center sign at 822 E. Grand River is being requested.

Ms. Cyphert reminded the board and audience in attendance that this is not a public hearing; the public hearing was already held at the January 8 meeting. Chairperson Angst noted that the board had received additional information from the applicant this evening to explain their request for variance. Marcus Wilcox, counsel for Coldwell Banker, addressed the board and reviewed the reasons that a hardship variance should be granted to the applicant. He noted they are spending thousands of dollars to renovate their building and the sign they are requesting would only have one message per day to indicate the number of houses sold per day in Livingston County and the proposed sign would allow them to take advantage of using more advanced technology than a static sign. He also noted that the adjoining property is blighted with overgrown vegetation and constant graffiti on the buffer wall. He also pointed out what they believe are similarities between the Chamber, who was granted a sign variance in 2011 for their LED digital message sign and noted he didn't think the Chamber should have

received a variance. He quoted Section 66-91 (14) (a) of the City of Brighton Sign Ordinance that “public service information signs and other electronic message centers classified as changing signs are permitted” and that he believes the applicant’s request does not go outside these boundaries. He also noted an additional hardship in that the building is set back like the Chamber’s. He is asking the board to either approve the sign or grant them the variance. Terry Gill from Coldwell Banker, 822 E. Grand River, noted that in addition to informing the public about how many homes were sold in Livingston County on a daily basis, the sign could also be used for Amber Alerts.

There was discussion about whether the requirements for a hardship have been met, and Chairperson Angst stated he did not believe they have made a case. He said the sign is too easily changeable and reminded the board members that the variance goes with the property, not just with the current business. He is also still concerned about the effect a digital sign would have on traffic safety on that section of Grand River and stated there are differences between this location and the Chamber’s. Ms. Urbain noted, as she did in the January meeting, that the ordinance is outdated and should be updated, but that is not the ZBA’s charge. The ZBA has to work within the existing ordinance. Ms. Bandkau noted she is concerned about the number of message changes per day, and Mr. Gill assured the board that if they are restricted to one change per day, that is what they will abide by. Ms. Gill stated that the sign will draw attention away from the bright blue graffiti that shows up on the wall next door. Mr. Gill also mentioned that if someone builds on the next door lot that his building will only be 20% visible since 80% of the building faces the neighboring property.

City Attorney Brad Maynes asked applicant’s counsel if they were looking for interpretation of the ordinances and was told yes. Mr. Maynes noted there are two issues to be considered; one is the hardship and the other is the interpretation of the ordinances and making a determination if something violates the ordinance. Mr. Maynes noted that we can’t make an interpretation of the ordinances based on the new information provided tonight. There was further discussion about whether conditions could be added if the board grants the variance and whether the board can use Grounds for Variance, section (e) instead of section (d) (1)-(4). Mr. McLane also brought up the differences between the location of the Chamber building, which sits back quite a way off Grand River with a parking lot in front that makes it difficult to discern what the building is without their sign, and the applicant’s building. He stated he is struggling to find the hardship for the applicant’s property and stated that the ZBA is here to enforce the current ordinance. Chairperson Angst stated he is also struggling with defining the hardship for the applicant’s property and noted that he drives by that building on a regular basis and does not notice any graffiti. He is also concerned with traffic safety and does not believe the applicant’s property has the same issues as the Chamber property. The Chamber sign also posts more information of interest to the public than daily statistics.

Motion by Board Member McLane, seconded by Urbain to deny the request for variance to allow an animated full color LED digital message center sign at 822 E. Grand River because the applicant did not make a case for hardship and doesn’t meet the criteria in Ground for Variance sections (d) and (e). Further discussion took place with Mr. Senak noting that the board could grant the variance based on (e) (1) and (2) and that there are other ways to address this. Ms. Urbain said she seconded the motion because she doesn’t think a variance applies if conditions are put on it. A roll call vote was taken as follows:

McLane – Yes	Angst - Yes
Bandkau – Yes	Gottschalk - Absent
Urbain – Yes	Curtis - No
Chaundy – Absent	
Senak – No	

**The motion carried 4-2-1.**

6. **Northridge Woods LLC for a vacant parcel off Black Walnut (18-06-100-034)** is requesting a variance to allow the removal of excess soil from the Northridge Woods site off Black Walnut. The developer is requesting to remove excess soil to build roads and buildings. **Sec. 98-46. Removal of soil, sand or other material** states the use of land for the removal of topsoil, sand, gravel or other material from the land is not permitted in any district except under a temporary certificate from the board of appeals, which may be denied or issued in appropriate cases upon the filing of an application accompanied by a suitable agreement or bond that such removal will not cause stagnant water to collect, or leave the surface of the

land at the expiration of such permit in an unstable condition or unfit for the growing of turf or other land uses permitted in the district in which such removal occurs. A temporary certificate for 1 year is being requested to allow the removal of excess soil from the Northridge Woods site.

The developer of Northridge Woods, Steve Davis, 7005 W. Ridge Drive, Brighton, MI, reviewed a slide presentation of the property and gave the background of the development area. He noted he has developed over 200 acres in Brighton over the last 14 years on property that was an old farm. Topsoil had to be removed and he had to land balance the property for drainage, etc. They have been moving topsoil off the property for three years because he can't build houses or condominiums on top of topsoil. He reviewed the site plan for Northridge Woods and stated there will be 67 units in total with two acres of natural area that will not be developed. He reviewed the topsoil stockpiles that have to be removed and noted that the prior amount of topsoil to be removed was estimated. The engineers have measured the remaining stockpiles and estimate there are 10,000 yards left to be removed. He said that 1,500 yards will be moved to a building project off Orndorf Drive and the balance has to be rid of during the summer months. He stated that last year's request was for a 3-year permit, but the ZBA only allowed a 1-year permit since he thought he would be able to have it removed within that time period. Ms. Cyphert inserted that his request last year was for 2 years according to our records. He noted that this is the last time he will be before the ZBA for a permit since this is the last phase of condos to be built.

There was discussion about whether the trucks removing the topsoil would be using the same ingress and egress roads as last year. Mr. Davis indicated they would be using the same roads and they would refresh the gravel. Black Walnut has not had the final coat of asphalt yet, which will be done once the topsoil has been removed. Mr. Senak reminded Mr. Davis that when the permit was requested last year that he assured the ZBA that the soil would be removed even if he had to buy a vacant lot to put it on. Chairperson Angst closed the regular meeting and opened the public comment portion of the meeting at 8:20 p.m.

Jim Bohn, 6200 Mountain Laurel, noted that he didn't hear anything about a hardship in Mr. Davis' request. He also noted that Lake Trust Credit Union got rid of their dirt in two to three months at their new facility's construction site. He stated he has lived in that development for 10 years and never anticipated ongoing construction. He does not believe the conditions of last year's permit were followed because there were heavy trucks doing earth moving on Saturday mornings. He noted that Mr. Davis had also gone before City Council for a site plan extension and City Council wanted the soil removed within one year. In his opinion, the ZBA should time bound this request to June 15 which should allow adequate time to remove the soil.

Tom Laroque, 1057 Steph Lane, concurs with Mr. Bohn's comments. He wants the ZBA to deny the request. The site is within a residential district and work like this is not usually done in a residential district. He also noted the work being done at all times and damage done to the roads due to the heavy trucks hauling the dirt away. He said that trees have been cut down, vegetation won't grow, etc., which is creating a financial hardship for the residents and the associations. He suggested that instead of removing the topsoil, it could be pushed around to other areas of the development where it is sparser.

Chairperson Angst closed the public comment portion and reopened the regular meeting at 8:28 p.m. for board member discussion. Mr. Senak asked Mr. Davis to respond to the issues that had been brought up in the public comment portion. Mr. Davis responded that there was plenty of topsoil left on the site. Mr. Davis said he can't build the last phase on topsoil; he needs sand and gravel. He also noted that not all of the Lake Trust material has been removed; they still have plenty to haul away. He also noted that the Michigan Frost Law doesn't come off the roads until mid-April, sometimes later, and that June 15 would not be enough time to haul the 10,000 yards of topsoil away. Mr. Davis also noted they were not hauling any material off-site on Saturday, just doing earth moving, and that he followed the conditions of last year's permit. Ms. Cyphert noted that earth moving is allowed on Saturday from 7:00 a.m. to 6:00 p.m. but not soil removal. Mr. Davis stated that they try to be conscious of the neighbors by sweeping the streets and watering to keep the dust down. He agreed with Mr. Bohn that he has been building on that site for the past 14 years; however, the building was not consistent due to a couple of recessions during that time when houses and condos were not selling.

There was discussion about damage to the roads and Mr. Davis indicated that Black Walnut is still his responsibility so he has to repair it before the City will accept it. Lee Road is a public road; it's a 20 year old County road. Mr.

Davis responded to a question about why he is requesting a 1-year permit by saying that if they can even start in mid-April, it usually is rainy in the spring and the truck would track mud onto the streets. The summer months of June, July and August are the best times to move the topsoil. Mr. Senak noted that it would be a good idea for Mr. Davis to get with the homeowners and find out how to address their concerns before they start hauling topsoil this year and wanted to know if Mr. Davis thought they could be done by August. Mr. Davis indicated he thought they could be done by the end of August. Ms. Urbain questioned the number of yards of topsoil; last year's request was 10,000 yards before removal and this year's request is an additional 10,000 yards. Mr. Davis reiterated that the engineers had actually dug into the topsoil stockpiles to measure the stacks and their best estimate is 10,000 yards, unlike last year when they just estimated the amount to be removed. Mr. McLane asked Mr. Davis what would happen if Mr. Davis was not permitted to remove the topsoil. Mr. Davis responded that the City would be left with a 20 acre site with topsoil stacks that can't be built on and he will get to the point where he can't build any more condos. Mr. McLane asked if the topsoil stack area could be turned into a park and Mr. Davis responded that it could if someone wanted to buy it. Mr. Maynes noted that there is no hardship requirement for this variance request.

Motion by Board Member Senak, supported by Curtis, to grant a temporary certificate to allow the removal of excess soil from the Northridge Ponds site with the following requirements. Mr. McLane asked for a friendly amendment to change the removal period to end at July 31 which was not accepted.

1. The temporary certificate is valid for one year.
2. Hours of operation include: 8 a.m. to 5 p.m., Monday through Friday excluding legal holidays. Trucks can arrive no earlier than 8 a.m.
3. Soil removal can occur from April 1<sup>st</sup> to August 31<sup>st</sup>.
4. After trucks are loaded, dirt/soil remnants must be removed from the trucks within the developer's private property.
5. The developer must install a drive accessing the truck loading area that meets drain commission standards to prevent dirt from being tracked onto the roads and help remove dirt/soil remnants from the trucks.
6. Trucks are not allowed to travel on Brighton Lake Road or Northern Ridge Drive.
7. The developer must add the City of Brighton as an additional insured on his general liability policy for one year.
8. Dust remediation practices must occur when needed.

A roll call vote was taken as follows:

Bandkau – No	Urbain - Yes
Senak – Yes	Chaundy - Absent
Gottschalk – Absent	McLane – No
Angst – Yes	Curtis - Yes

**The motion carried 4-2-1.**

7. **Steve Alexander w/ Group 10 Management for 8589 W. Grand River (18-30-100-066)**, is requesting a variance to allow the removal of excess soil from 8589 W. Grand River at the corner of W. Grand River and Orndorf/Best Buy Drive. The developer is requesting to remove excess soil to balance the site and construct two new commercial buildings and site improvements. **Sec. 98-46. Removal of soil, sand or other material** states the use of land for the removal of topsoil, sand, gravel or other material from the land is not permitted in any district except under a temporary certificate from the board of appeals, which may be denied or issued in appropriate cases upon the filing of an application accompanied by a suitable agreement or bond that such removal will not cause stagnant water to collect, or leave the surface of the land at the expiration of such permit in an unstable condition or unfit for the growing of turf or other land uses permitted in the district in which such removal occurs. A temporary certificate for 1 year is being requested to allow the removal of excess soil from the 8589 W. Grand River site.

Steve Alexander, 3129 Ivy Hill, Commerce Township, from Group 10 Management introduced Thom Dumond from Boss Engineering. Mr. Dumond reviewed the site plan which has been approved by Planning Commission and City Council. He stated that two buildings totaling 20,000 square feet will be built on the site on the front and back portions of the lot. He explained that the buildings which formerly occupied this space did not have the current

engineering, ADA, etc. restrictions. He noted that the topography is quite different from front to back and that they have to level the property to accommodate the three entrance driveways – one off Grand River, one off Brookside Lane and the other off Best Buy Drive. They are currently looking at places to haul the material to and he estimates there are 10,000 yards to be removed. Mr. Alexander noted they want to have the buildings up and occupied by this fall so they will have to haul the material away during the summer. Ms. Cyphert noted that Group 10's building permits have been submitted to the City for review.

Ms. Urbain questioned if time restrictions would be applicable here and Mr. Alexander responded that they would abide by the ordinances governing hours of operation for this property's zoning. Chairperson Angst closed the regular meeting and opened the meeting for public comments at 9:02 p.m. Hearing no comments, the regular meeting was reopened.

Motion by Board Member Urbain, supported by Bandkau, to grant a temporary certificate for 1 year to allow the removal of excess soil from the 8589 W. Grand River site with the following requirements:

1. That private roads are not used (i.e., Best Buy Drive) to haul away the excess soil.
2. That debris left on the site is to be cleaned up by the applicant.
3. That any damage to public roads be repaired by the applicant.

A friendly amendment by Board Member Urbain was made, supported by Bandkau, to amend the motion to allow for a 6 month time period instead of 1 year. A roll call vote was taken as follows:

Angst – Yes	Gottschalk - Absent
McLane – Yes	Senak - Yes
Chaundy – Absent	Urbain - Yes
Bandkau - Yes	Curtis – Yes

**The motion carried 6-0-1.**

## **8. Staff Updates**

Ms. Cyphert advised that there has been nothing submitted for a March ZBA meeting as of today and she will let the board know whether there will be a meeting or not.

## **9. Call to the Public**

Chairperson Angst made a Call to the Public at 9:07 p.m. Hearing no response, call to the public was closed.

## **10. Adjournment**

**Motion** by Board Member McLane, seconded by Bandkau, to adjourn the meeting at 9:07 p.m. **Motion carried 6-0-1.**

Respectfully submitted,

Lauri French, Deputy Director  
Community Development, Planning & Zoning  
February 18, 2015