

**CITY OF BRIGHTON
ZONING BOARD OF APPEALS
MINUTES
April 9, 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 – Present
Russ Gottschalk – Present
Doug Angst – Present
Ricci Bandkau - Present
Dave Senak – Present
David McLane – Present
Alicia Urbain – Present
Amy Cyphert
Lauri French
Audience – 24

3. Approval of the February 12, 2015 Meeting Minutes

Motion by Board Member Bandkau, seconded by Urbain, to approve the meeting minutes of February 12, 2015.
Motion carried 5-0-2, with Chaundy and Gottschalk abstaining.

4. Approval of the April 9, 2015 Meeting Agenda

Motion by Board Member Urbain, seconded by Senak, to approve the April 9, 2015 agenda as presented.
Motion carried 7-0.

Old Business

New Business

- 5. Corrigan Oil (735 North Second LLC), Advance Street Lot (4718-30-300-012)**, is proposing to construct a gravel access drive to the 800 Whitney Street property that abuts their Advance Street property. The applicant is also proposing that a portion of a proposed parking lot be gravel. Section 98-83 (7) states all off-street parking spaces, driveways, drive aisles, entrances, exits, circulation and maneuvering areas, shall be surfaced and curbed prior to occupancy of the building. Surfacing and curbing shall be accomplished according to the city's design standards, as amended. The use of curb blocks is prohibited. Section 98-83 (8) states all parking spaces, driveways, drive aisles, entrances, exits, circulation and maneuvering areas, shall be graded and drained to city engineer standards. Any required retention or detention area may be required to be landscaped. Section 98-83 (9) states the lighting for all parking areas and drive aisles shall be a cutoff luminaire that completely contains the light source. Parking lots shall be illuminated from one-half hour after sunset to one-half hour before sunrise, at the levels specified in the ordinance. Illumination levels shall be measured three feet above the lot surface. Any parking lot lights shall be directed away from, and have no adverse effect upon, any residential use. A variance to allow a gravel access drive to the 800 Whitney Street property that abuts the Advance Street property and a variance to allow a portion of the parking lot to be gravel is being requested.

Wayne Perry from Desine Engineering, representing Mike Corrigan, explained both of tonight's agenda requests since they are intertwined. The Advance Street property sits behind the Corrigan Second St. property. Their goal is to eliminate traffic from Whitney Street and they need access to Advance Street. There is a wetland pocket on the property that captures storm water. The northerly portion of the wetland had to be filled in, which Corrigan has done, to create additional parking and to access the 800 Whitney St. property. The reason they are requesting a variance to allow a portion of the parking lot to be gravel is because the fill will settle for a while and they will need

to wait to pave. Mr. Perry pointed out which portion would be gravel and which portion would be paved on the site plan in response to questions from board members Senak and McLane. He also noted that the sedimentation basin will stay; it filters water before it gets to the wetland. Board member Senak wanted to know if the ZBA Board were to grant the requested variance, how do we know it will eventually be paved. Mike Corrigan explained they are working with a 12 to 24 month timetable, depending on how quickly the fill settles. He noted that this project still has to go through Planning Commission and City Council and they can make approval conditional on specific timing for the paving to be done.

Chairperson Angst closed the regular meeting and opened the public hearing at 7:45 p.m. Susan Walters-Steinacker, 907 Brighton Lake Road, wanted to inform the board that she was at an auction of about 100 cars in various conditions (i.e., some were burned out or otherwise damaged) for Corrigan Towing on January 17 this year. At the auction, a Corrigan employee was heard to say that Corrigan would be moving all towed vehicles over to the Advance St. property. She said this property is zoned industrial, not commercial, and she wants the ZBA to put in conditional zoning to not allow junk cars on property that could potentially leak fluids such as gas and oil.

Joe Monroe, 633 N. Second St., which is at the south end of the map shown, noted that he has known the Corrigan's for many years and they have contributed a lot to the City over the years. He is concerned about the back lot project. In the March 13, 2015 letter that accompanied their variance application it stated "during our discussion with City Staff and consultants it was determined that we would need to seek a variance if we determined we could not meet the zoning ordinance requirements for driveways and parking lots", which in his opinion sounds like a deal was made with the City. He questioned how anyone knew at that time that a variance was required. He also questioned the filling of the wetland and whether the proper permits had been issued and whether a compaction test had been performed that could indicate whether it could support paving right now instead of waiting up to two years. In his opinion, there are three alternatives; one, Corrigan could remove the fill and replace it with appropriate material; two, they could cut back on the amount of paved parking and leave part of it for future parking; and three, they could pave it now and repair it if it settles. He pointed out that it was stated the variance goes with the property and if Corrigan ever sold it, the new owner would have no obligation to pave it. He also noted that a gravel parking lot does not require curb and gutter and he believes this would set a bad precedent for developers.

Debra Rice, 712 Whitney, noted that her property butts up to the wetland noted on the site plan. She is concerned about pollution with an increased number of semi-trucks on the property. She noted that the wetland sustains a whole ecosystem and she is concerned about fluids leaking into it. She also questioned what is to prevent Corrigan from filling in the rest of the wetland?

Jim Filipowski, 720 Walnut, does not support the variance as he is concerned about increased noise, lights and dust due to the trucks. He noted that he had his house power washed in the early spring and a couple of weeks later it was dirty again due to the dust.

Jerry Joseph, 721 Advance St. (Joseph Properties, contiguous to Corrigan), supports the variance request but is concerned about gravel on Advance and Whitney Streets from truck tires and degradation of the roads due to heavy trucks. He is in favor if we can move this forward and questioned whether there can be a time limit between the variance being approved and the paving. He noted that the one to two year timetable seems reasonable. He asked why the drive to access Second St. was not on the site plan, and Mike Corrigan stated that they will have to add it to the plan because it should have been shown. Mr. Joseph stated that approval of the variance would eliminate Whitney St. traffic and most of the traffic on Advance St.

Chairperson Angst read an email dated April 9, 2015 from Scott Sage (attached) in support of granting the variance. He closed the public hearing and reopened the regular meeting at 8:10 p.m.

There was discussion about the City Engineer's position, and Gary Markstrom from TetraTech stated that fill over the top of a wetland does have a tendency to settle, depending on the base. He said that use would compact the drive and suggested that Corrigan monitor the compaction level over a period of time to determine the timeline for paving. Once it settles, it could be a shorter time frame than the estimated one to two years. As noted, the timing for paving could be handled by making it a condition of approval by the Planning Commission. She noted that no

conditions can be put on the variance if granted by the ZBA. Mr. Perry noted that if the variance does not get approved, traffic would still go down Whitney St. Board member McLane noted that there is an advantage to having trucks drive over the gravel to compact it before it gets paved and asked the City Engineer whether the compaction could be sped up so all areas get compacted at the same time. Mr. Markstrom responded that there are mechanical means to accelerate the process but noted that the driveway will get compacted first and he is not as concerned about the parking area since there won't be as much traffic rolling over it to cause cracking.

Motion by Board Member Urbain, seconded by McLane, to approve a variance to allow a gravel access drive to the 800 Whitney Street property that abuts the Advance Street property and a variance to allow a portion of the parking lot to be gravel due to the practical difficulty of needing the gravel to settle prior to paving and with a strong suggestion that Planning Commission and City Council review and put a time limit for paving as a condition of approving the site plan. A roll call vote was taken as follows:

Board Member McLane – Yes	Board Member Senak - Yes
Board Member Bandkau – Yes	Board Member Angst - Yes
Board Member Urbain – Yes	Board Member Gottschalk - Yes
Board Member Chaundy - Yes	

The motion carried 7-0.

- 735 North Second LLC, 800 Whitney Street (4718-30-300-014)**, is proposing to construct a gravel access drive to the Advance Street property that abuts the 800 Whitney Street property. The applicant would like to maintain the existing gravel parking areas. Section 98-83 (7) states all off-street parking spaces, driveways, drive aisles, entrances, exits, circulation and maneuvering areas, shall be surfaced and curbed prior to occupancy of the building. Surfacing and curbing shall be accomplished according to the city's design standards, as amended. The use of curb blocks is prohibited. Section 98-83 (8) states all parking spaces, driveways, drive aisles, entrances, exits, circulation and maneuvering areas, shall be graded and drained to city engineer standards. Any required retention or detention area may be required to be landscaped. Section 98-83 (9) states the lighting for all parking areas and drive aisles shall be a cutoff luminaire that completely contains the light source. Parking lots shall be illuminated from one-half hour after sunset to one-half hour before sunrise, at the levels specified in the ordinance. Illumination levels shall be measured three feet above the lot surface. Any parking lot lights shall be directed away from, and have no adverse effect upon, any residential use. A variance to allow a gravel access drive to the Advance Street property that abuts the 800 Whitney Street property and a variance to maintain the existing gravel parking areas is being requested.

Wayne Perry from Desine Engineering, on behalf of Mike Corrigan, reviewed the second half of the project. He noted there are some areas of fill and pointed them out on the site plan. Corrigan has done some test holes (soil borings) on the property and they have found buried tires but have no idea how deep they are buried or exactly where they are buried on the property. This is a problem because they can't pave over tires. He noted that the gate and access to Whitney St. will remain for emergency vehicles only. Normal access will be across the back lot property to Advance Street and will be the only access point as they don't want to use Whitney St. He noted that Corrigan has not used Whitney St. since they purchased the property. He reviewed the limits of pavement and existing gravel on the site plan. Board member Senak asked whether they could use earth moving equipment to remove the tires to the base. Mike Corrigan responded that this is part of the practical difficulty for which they are requesting the variance as they are not sure where the tires are located and it may take some time to remove them. Board member Senak noted that the residents' concerns would be addressed with the proposed access drive. Ms. Cyphert stated that Corrigan is asking for the variance to resolve this issue, which will allow the gravel to compact so they can pave at a later date for that access point.

Chairperson Angst closed the regular meeting and opened the public hearing at 8:48 p.m. Martin VanAmburg, 724 Whitney, stated that he is in support of the variance. He has a major issue with the trucks on Whitney due to the constant noise and air brakes.

Debra Rice, 712 Whitney, stated that she likes the plan to keep the trucks off Whitney and supports the variance to

avoid having the wetland being filled in completely.

Hearing no further comments, Chairperson Angst closed the public hearing at 8:50 and reopened the regular meeting. Board member Urbain noted that Corrigan is trying to get the variance to go to Planning Commission for approval and that approval of the variance would save the residents from trucks constantly going up and down Whitney St.

Motion by Board Member Urbain, seconded by Senak, to grant a variance to allow a gravel access drive to the Advance Street property that abuts the 800 Whitney Street property and a variance to maintain the existing gravel parking areas due to hardship related to the residents' concerns about truck traffic and noise on Whitney Street and wetland and in order to allow the gravel to settle before paving. The motion is made with a strong suggestion to have Planning Commission and City Council review and put a time limit for paving as a condition of approving the site plan. A roll call vote was taken as follows:

Board Member Bandkau – Yes	Board Member Urbain - Yes
Board Member Senak – Yes	Board Member Chaundy - Yes
Board Member Gottschalk – Yes	Board Member McLane - Yes
Board Member Angst – Yes	

The motion carried 7-0.

7. **Marcus Wilcox, 3075 E. Grand River Suite 118, Howell, MI 48843 for Coldwell Banker at 822 E. Grand River (4718-31-204-001)**, is requesting an ordinance interpretation of the following:

Section 66-91 (a)(14)(a) which states Animated and intensely lighted signs. No sign shall be permitted which is animated by means of flashing, scintillating, blinking or travelling lights or any other means not providing constant illumination (unless specifically permitted in special sign districts). Public service information signs and other electronic message centers classified as changing signs are permitted.

Section 66-2 which states Public service sign means any sign intended primarily to promote items of general interest to the community such as time, temperature and date, atmospheric conditions, news, traffic control, etc.

Marcus Wilcox, 3075 E. Grand River, Suite 118, Howell, MI 48843, counsel for Coldwell Banker at 822 E. Grand River, stated that he is looking for interpretation that a single line, non-flashing, non-blinking is permitted. Under Section 66-91, his interpretation is that the sign would not be prohibited since it will only be changed once per day and would be allowed as an electronic message center. He noted that there is no definition for "electronic message centers" in the code. He also quoted from State law and noted that if ordinance language is ambiguous, the law sides with the property owner. An interpretation from the ZBA board will make it allowable under the ordinance and a variance is not required.

There was discussion by the board members about whether the sign has the capability to scroll and how big the letters are on the two lines of the LED portion of the sign. Ms. Cyphert noted that the sign would have the capability to scroll, be animated and change more than once daily since it is done by computer. However, if the sign is allowed under the ZBA interpretation that it can only be allowed to change once per day and they exceed that, it would become an enforcement issue and they could be ticketed. She also noted that if an interpretation is made that this type of sign is not a scrolling or animated sign, that when a digital sign permit comes to the City and it meets the interpretation, the applicant could have that sign as the ZBA is making the decision how they want this applied from now forward. Board member Urbain said the question is whether what they are proposing fits into the ordinance as written. Terry Gill from Coldwell Banker, 822 E. Grand River, stated that they went about this the wrong way the first time and should have requested an interpretation first instead of going for a variance. He said the sign will not be animated and if they use it the wrong way, they understand they would be in violation of the ordinance and could be ticketed.

Chairperson Angst closed the regular meeting and opened the public hearing at 9:10 p.m. Susan Walters-

Steinacker, 907 Brighton Lake Road, reminded the board that they need to follow Roberts Rules of Order and make sure that people speaking to the board give their names and addresses. She also noted in reference to a prior public comment that the only "elected" official on the ZBA is Ricci Bandkau, who is an elected Council member. All other board members are appointed by City Council, and City Staff and the City Engineer are hired and can be fired by City Manager Dana Foster. She doesn't have a problem with a static digital sign; they are hard to read when you're driving by at 35 miles per hour.

Kim Welshgemuend, 314 N. First St., supports the Coldwell Banker electronic sign. She is a competitor at another real estate office, but she stated the Gills have done a lot for the City and in her dealings with them they have always been above board.

Hearing no further comments, Chairperson Angst closed the public hearing and reopened the regular meeting at 9:13 p.m.

Board member Senak stated that he considers the sign to be a public service sign as long as it is not animated and it would therefore fall within the sign ordinance. Board member McLane noted that in light of new information presented tonight, the sign would fall under ordinance constraints. Chairperson Angst asked whether City Staff could have approved the sign without coming to the ZBA. Ms. Cyphert responded that the board is making a decision tonight on the definition from here on out until the ordinance gets changed and to determine how Staff, Planning Commission and City Council will enforce future requests. Board member Urbain noted that the sign doesn't have to be considered a public service sign since the electronic message center language is applicable. Board member McLane asked how the sign ordinance might get amended and Ms. Cyphert responded that tonight's decision applies to this and future requests but it doesn't change the ordinance. The ZBA board would have to request Staff to take this to Planning Commission and City Council.

Motion by Board Member Urbain, seconded by Bandkau, that the ZBA Board's interpretation of an electronic message center is as follows: Is an electronic sign that does not flash, is not scintillating, does not blink, have travelling lights and only changes once per day. A friendly amendment by Board Member Urbain was made, supported by Bandkau, to amend the motion to include that the once per day change would occur after normal business hours. A roll call vote was taken as follows:

Board Member Angst – Yes	Board Member Gottschalk - Yes
Board Member McLane – Yes	Board Member Senak - Yes
Board Member Chaundy – Yes	Board Member Urbain - Yes
Board Member Bandkau – Yes	

The motion carried 7-0.

8. Election of Officers

Ms. Cyphert advised that the board has to elect a Chairperson and Vice Chairperson. She noted that a motion could be made to reappoint the current officers. Motion by Board Member Gottschalk, seconded by McLane, to reappoint the current officers for another term. Chairperson Angst stated he would accept the nomination but wanted to let the board know that he will be resigning from the ZBA later this year and will not be able to serve his entire term.

The motion carried 7-0.

9. Staff Updates

Ms. Cyphert advised that there has been nothing submitted for a May ZBA meeting as of today and she will let the board know whether there will be a meeting or not. She also noted that she and Board member McLane, who is the ZBA liaison to Planning Commission, will take the digital sign ordinance to Planning Commission to clarify what changes should be made to the ordinance.

10. Call to the Public

Chairperson Angst made a Call to the Public at 9:30 p.m. Hearing no response, call to the public was closed.

11. Adjournment

Motion by Board Member McLane, seconded by Gottschalk, to adjourn the meeting at 9:30 p.m. **Motion carried 7-0.**

Respectfully submitted,

Lauri French, Deputy Director
Community Development, Planning & Zoning
April 10, 2015