

**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
TUESDAY, FEBRUARY 9, 2021
MINUTES**

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to Van Buren Township residents; the meeting was called to order by Chairperson Sellers at 7:03 p.m. via virtual meeting.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Present: Aaron Sellers (Chair), Amos Grissett (Vice-Chair), Kevin Martin (Trustee), John Haase, John Herman, Charles Larocque, Medina Atchinson (Planning Commission Rep.), Jeff Jahr (Planning Commission Alt.)

Staff: Dan Power (Dir. of Planning & Economic Development), Matthew Best (Dir. of Public Services), Deanna Murphy (Acting Recording Secretary), Ryan Nichols (Communication Specialist)

Planning Representative: Vidya Krishnan (McKenna Associates)

ACCEPTANCE OF AGENDA:

Director Power requested a couple of minor corrections pertaining to the two newest Planning Commission members. Mr. Jahr will serve as the Planning Commission Alternate and Ms. Atchinson as the Planning Commission Representative. Currently, the BZA Secretary position is vacated and will be addressed under New Business – Election of Officers for 2021. Lastly, with regards to the two Cases presented tonight, staff will present first followed by public comments and then by applicants.

Moved and seconded by Board members Grissett and Haase to accept the February 9, 2021 Board of Zoning Appeals Agenda as amended.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

APPROVAL OF DECEMBER 8, 2020 MEETING MINUTES:

Moved and seconded by Board members Haase and Herman to approve the BZA Meeting Minutes of December 8, 2020.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

CORRESPONDENCE: None

PUBLIC HEARING - Non-New Business Items:

Moved and seconded by Board members Grissett and Haase to open the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

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Being that there were no public comments, moved and seconded by Board members Atchinson and Haase to close the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

NEW BUSINESS:

1. Election of Officers for 2021

Moved and seconded by Board members Haase and Grissett to nominate Aaron Sellers as the BZA Chair for 2021.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Moved and seconded by Board members Sellers and Haase to nominate Amos Grissett as the BZA Vice-Chair for 2021.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Moved and seconded by Board members Martin and Grissett to nominate John Herman as the BZA Secretary for 2021.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

2. BZA Case #21-006 NEAPCO Drivelines (on behalf of owner, Van Buren Industrial Investors LLC)

Location/Parcel #: 6735 Haggerty Road/Parcel ID# 83 002 99 0026 704, zoned M-1, Light Industrial

Request: The applicant is requesting a variance from the following section of the Charter Township of Van Buren Zoning Ordinance.

Maximum lot coverage limits of Section 4.102 (Schedule of Regulations) of the Zoning Ordinance, which limits the total lot coverage, or part of a lot occupied by buildings or roofed structures including accessory buildings or structures in the M-1 Zoning District:

- **Required:** The maximum lot coverage shall be 35%.
- **Proposed:** 35.92% lot coverage with +/- 711,179-sq. ft. of building area on a +/- 45.44-acre lot including a proposed canopy addition.

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Moved and seconded by Board members Herman and Martin to open the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Staff/Consultant Comments:

Ms. Krishnan presented her letter dated January 27, 2021. She reiterated the subject site is a 45.44 acres parcel located in an M-1 Light Industrial District. NEAPCO Drivelines is proposing to construct a 20,379 sq. ft. addition, which will result in a net building area of 711,179 sq. ft. The current Zoning Ordinance has a maximum lot coverage limit in the M-1 District of 35%. The existing lot coverage is 34.90%. With the proposed addition, the lot coverage will increase to 35.92%, which will exceed the lot coverage of 0.92% or 18,401 sq. ft. In brief, Ms. Krishnan's recommendation to deny the variance requested by NEAPCO Drivelines is based on the following 14 findings of facts:

- 1) Strict compliance with the ordinance standards will result in a much smaller addition.
- 2) Compliance with Ordinance standards can be achieved through acquisition of a small portion of land from the abutting property to the west which the applicant is not desirous of for financial reasons.
- 3) The applicant previously received approval for outdoor storage. The need for variance solely arises due to the applicant's need to provide weather protection for the storage.
- 4) The variance would provide substantial justice to the applicant but is adverse to the intent of the Zoning Ordinance.
- 5) There are no unique circumstances associated with the parcel that would justify a deviation from lot coverage standards.
- 6) The problem necessitating the variance is self-created.
- 7) Granting of the variance is likely to set a precedent for similar requests from other industrial parcels.
- 8) The proposed variance is related to the valid exercise of police power.
- 9) The variance is not likely to impair light and air to adjacent property or increase the congestion in the public streets.
- 10) The variance is not likely to increase the hazard of fire or flood or endanger the public safety.
- 11) The variance is not likely to diminish property values.
- 12) The variance is not likely to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.
- 13) The variance could possibly alter the character of the neighborhood by setting a precedent for over-built parcels.
- 14) Approval of the variance without adequate justification is contrary to sound planning principles.

NEAPCO Drivelines representatives: Kris Benson (Designer), Jim Jacobs (Designer), Sean Mulligan (Plant Manager), Joe Boice (Director of Manufacturing)

Mr. Mulligan explained that NEAPCO has been in this facility since 2008 (13 years) and is experiencing rapid growth that they are space constrained inside the building. Currently, they are forced to store customer containers outside in the back of the facility subjecting them to undesirable elements (rain,

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snow and debris). They are requesting a variance to construct a roof to cover the dunnage/end items (customer material). By not covering this material has created a safety issue inside the building because once the material is brought back inside, the snow melts causing a safety hazard (slip hazard).

Mr. Boice added that they have grown from 60 to 600 employees. There has been tremendous growth. He is proud to say that NEAPCO is one of Van Buren Twp.'s major employers and through the talent and acquisitions that they have hired in this area has help drive that growth. Their partnership with the Township has been instrumental in their growth. This variance request is less than 1% of their overall lot coverage. Without this minimal expansion, they are experiencing difficulty protecting their racks from snow, debris and bird droppings. The proposed structure would not adversely affect any neighboring properties and will be well kept and maintained.

The Designers continued to explain that the suggested land acquisition option was not feasible. For clarification, the ownership of the front parcel to the west is not the same as the property that is developed. There is a landowner who originally developed the parcel as it exists. NEAPCO is a tenant within it so they do not have the ability to purchase any land. While there is a common entity that is part owner in the front parcel to the west, there is also an unwilling partner to agree with this option. The neighboring parcel to the south would not be feasible either. The hardship in this case is the safety hazard created by outside elements (snow, ice, rain, debris, etc.). This proposal would not have any detrimental impacts toward run-off, environment or traffic patterns. Additionally, providing this coverage would have positive environmental impacts, such as, life span of rack use. In comparison to adjacent municipalities (light industrial), lot coverage allowance: Plymouth = 50%, Farmington = no restrictions, Ann Arbor = 80%, Taylor = 35%, Dearborn Heights = 40%, and Livonia = 40%. They are not looking for additional building footprint. They are merely asking for protective screening for outside storage. If they were to put sides (only) on it, it would be allowed for outside storage resulting in the creation of a larger mass; however, merely erecting a roof leaving sides open, would violate maximum lot coverage by VBT ordinance. With the vacancy coming through the loss of Vistar (relocation), NEAPCO is considering expanding their facility (production only – not storage). There is no opportunity to move storage indoors.

Ms. Krishnan asked Mr. Jacobs if there was any consideration of a retractable awning-type structure (or similar), that could serve NEAPCO's needs and not impact the lot coverage percentage. Mr. Jacobs replied that they would need 75 feet (storage distance) in order to cover the racks and truck wells which would require a support-type structure. If they could utilize such a structure and put a retractable roof on it, then they would consider it.

Mr. Anton (Property Owner) said the property was developed 21 years ago and he is in full support of NEAPCO's modification request. They have looked at every alternative possible including the property to the west but was unsuccessful. This is a 700k sq. ft. project and NEAPCO is a huge tenant in the community. It is his hopes that the Twp. will be able to find a way to help solve their problem and safety concerns. As Vistar is moving to Romulus, this will provide an opportunity for NEAPCO to grow within Van Buren.

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Being that there were no public comments, moved and seconded by Board members Haase and Atchinson to close the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Board Discussion:

It was asked if anyone knew the origin of the current Zoning Ordinance maximum lot coverage limit of 35% in the M-1 District, and if there is a possibility to increase it. From his experience, Director Power has seen lot coverage limits set in place to reduce the intensity of development, preserve open space and reduce run-off. He believes this is a reasonable standard and helps prevent over-building a site, contributing to run-off and depleting space on a site. However, there is always the possibility to ask the Planning Commission to look at it more closely. Ms. Krishnan added that she believes this standard has existed for 20-25 years. It has served the community well and was created with the idea that sites should have ample areas for landscaping and besides parking, it prevents it from covered 100% with concrete or asphalt. Different communities have different visions but Van Buren is relatively flat and is known to have drainage issues. A zoning amendment is feasible but is up to the applicant to request this consideration.

Would snow/water continue to be tracked into the facility even if a roofed structure was permitted? Mr. Mulligan replied that he believes it would provide adequate coverage to prevent bringing the elements inside.

Board member Atchinson referenced letters of fellow Planning Commissioners and agrees/in support of NEAPCO's expansion request. It is less than 1% of additional coverage, would not create additional runoff, and improve employee safety. NEAPCO has been a great community neighbor for Van Buren Twp. and she is in support of this request. Chair Sellers concurs with Board member Atchinson.

Board member Martin is concerned of the precedence this may set for further businesses to expand. Ms. Krishnan explained that even though she has to follow letter of the law and understands NEAPCO's argument (need for covered storage) but does not agree with their public safety because all businesses experience this issue. If there is no valid reason for approval, then you run the risk of setting precedence for the next industrial building seeking a variance. NEAPCO request for less than 1% equates to 18,000 sq. ft. The next case could only ask for 5%, which may only be 5,000 sq. ft. depending on the size. If the Board decides to support this variance, she would suggest that the definition of structure in the zoning ordinance be amended. It would not be recommended changing the lot coverage. She further believes the applicant's argument is compelling and they are technically not increasing impervious area by putting a cover over the lot that is already paved. Currently, the way the ordinance is written, it states a structure is anything that has got attachment to a permanently anchored feature.

Board member Grissett asked the applicant if they would consider tabling this variance request in order to go in front of the Planning Commission to get request the necessary definition changes. Ms. Krishnan explained that if the Planning Commission agrees to the requested changes in the definition of how a

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structure is perceived, then there would be no need for the applicant to return to the BZA for a variance.

Moved and seconded by Board members Martin and Herman to postpone the variance request and send NEAPCO Drivelines to the Planning Commission for consideration of a solution over 1) total lot coverage, 2) how lot coverage is defined, or 3) how a structure is defined.

Roll Call Vote: (6) AYES – Grissett, Martin, Haase, Herman, Larocque, Atchinson
(1) NAYS – Sellers

Motion Carried

3. Case Number: 21-005 – Clover Communities Van Buren LLC

Location/Parcel #: 8470 Belleville Rd./Parcel ID# 83 036 99 0002 702, zoned C-2 – Extensive Highway Business District

Request: Interpretations by the Board of Zoning Appeals (BZA) of the definition of “Usable Floor Area” as described in the following Section of the Charter Township of Van Buren Zoning Ordinance:

- Section 5.143 Senior Housing
- (D) Required Minimum Usable Floor Area in Square Feet Per Dwelling Unit
 - (1) Independent Living Units: Efficiency/studio and one-bedroom dwelling units: 650 feet; Two-bedroom dwelling units: 850 square feet.

Interpretations for which appeals are sought:

- **Balconies** are not intended to be credited toward usable floor areas of dwelling units for purposes of meeting minimum usable floor area requirements.
- **Communal living spaces** are not intended to be credited toward usable floor areas of dwelling units for purposes of meeting minimum usable floor area requirements.

Moved and seconded by Board members Haase and Herman to open the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Staff/Consultant Comments:

Director Power explained in this case, the BZA is requested to hear and decide appeals for the interpretation of the provisions of the Zoning Ordinance per Section 12.403(B). In particular, this applicant seeks the interpretation pertaining to the minimum Usable Floor Area (UFA) in square feet per dwelling unit in independent senior housing developments, specifically regarding how balconies and communal living areas apply toward this requirement. A single one-bedroom dwelling unit in a senior housing development requires a 650 sq. ft. and two-bedroom dwelling unit requires 850 sq. ft. Staff’s original interpretation of the Ordinance, balcony space and communal living space (game room, coffee area, seating areas, etc.) cannot be credited towards the UFA within a building. Tonight’s request

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is not to seek a variance to this standard but to seek a reinterpretation of how this standard is applied, which would consider allowing balconies and/or communal living space. For example, the BZA will consider whether or not each dwelling unit will consist of 850 sq. ft. or there must be 850 sq. ft. UFA accounted for in the overall building for the number units that exist in the building.

Vidya Krishnan explained the proposed Clover Senior Housing Development is a 3-story, 45,860 sq. ft. building with 125 living units. The sizes of the units vary from 682 sq. ft. (one-bedroom) to 776-810 sq. ft. (two-bedroom). The Ordinance currently requires a minimum of 850 sq. ft. for a two-bedroom unit, making the proposed units 74-40 sq. ft. smaller in size than required. The applicant contends that the UFA should include the individual balconies provided for each unit and the community area (i.e., common use spaces within the building). However, language in Section 4.103. Footnotes to the schedule of regulations, subsection (b) is very clear on the exclusion of balcony square footage in the overall dwelling unit's UFA. With regards to common-space areas (areas with amenities for residents only), there is some merit to include these areas as part of a unit's UFA when considering senior housing (only). This could be addressed through a zoning amendment. An interpretation by the BZA would allow the Planning Commission to proceed with formally changing the Zoning Ordinance to help make this interpretation concrete for future any developments. After this interpretation and clarification, the applicant will have to return to the Planning Commission for site plan and special land use approval.

Ms. Krisnan explained that since this case is not a variance request, we will not use the standards of practical difficulties of unnecessary hardships; however, interpreting the ordinance is within the police power of the BZA. It is further recommended per McKenna letter dated January 27, 2021, the BZA take the following actions:

- Uphold the ordinance language for usable floor area to exclude balconies from being considered as usable floor area.
- Agree to an interpretation to include common-space/community space/amenities within the building as usable floor area for senior housing only.
- Request the Planning Commission to amend the senior housing ordinance to add such clarification.

These recommended actions are based on the following findings of fact:

- 1) The ordinance definition is clear that balconies, terraces and similar 'outdoor' unheated spaces cannot be considered as part of the usable floor area for living purposes.
- 2) The Township ordinance for senior housing unit sizes is moderate and requires unit sizes in a middle range of other communities with a similar ordinance.
- 3) Seniors tend to use amenities and common-space areas and facilities provided within the building.
- 4) The proposed interpretation appeal is related to the valid exercise of police power.
- 5) The interpretation is not likely to impair light and air to adjacent property or increase the congestion in the public streets.
- 6) The interpretation is not likely to increase the hazard of fire or flood or endanger the public safety.
- 7) The interpretation is not likely to diminish or impair established property values within the surrounding areas.

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- 8) The interpretation is not likely to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.
- 9) The interpretation is not likely to alter the essential character of the neighborhood.

Clover Communities Representatives: Beth Ernat (Development Director), Matt Roland, and Jared Kime

In brief, Ms. Ernat presented a PowerPoint presentation. Some highlights are as follows:

- Has approximately 6,500 active adults age-restricted independent living units in over 50 communities throughout the northeast and Midwest.
- Designed for self-sufficiency and offer affordable rates.
- Included in the lease are the communal areas (community room, outdoor patio, library, community lounge w/ fireplace and study, fitness center, coffee room w/ seating, family room and resident seating areas throughout the building) available only to the residents of the building, making them part of their home environment.
- On-site beauty salons / barbers are not included as part of the communal living space because they are not used by everyone and are paid-per-service amenities.
- Individual storage units are also available as a paid-per-service or an add-on.
- Clover Communities recognizes/concedes that the balconies should not be included in the overall UFA calculations.
- They also acknowledged that the utilities areas and sanitary facilities are excluded from the UFA calculations.
- Will not include a commercial kitchen but a microwave and refrigerator will be available.
- Including the communal areas in the UFA, the revised average square footage per apartment was presented in a chart.

Mr. Kime added that the main point they are trying to convey relating to the ordinance's definition, it is the "square footage per unit"; not "square footage in the unit". The common spaces are large usable spaces that take up much of the building's footprint for the residents' use making it a communal environment. They are well designed with higher end finishes to make them welcoming and comforting to be part of their communal living vs. singular living.

Director Power summarized that the applicant is not including: salon/barber shop, individual storage units, hallways, elevators, trash rooms, bathrooms, mechanical rooms, stairs, mail rooms in what is deemed UFA. Excluding these areas, the applicant is looking at the entire enclosure of this building and there will be some UFAs boxed into discreet dwelling units and additional UFA available through communal rooms (i.e., coffee area, etc.). BZA is being asked whether or not this is a valid interpretation of UFA per unit as required for senior housing as opposed to the initial interpretation that the only UFA is each discreet dwelling unit.

Board Discussion:

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With reference to Clover's chart, Board members asked for clarification if each floor had their own common areas figured into their UFA per unit or is all the common areas shared among the three floors.

Ms. Ernat clarified that the computations for the common areas are calculated by floor; not as a whole unit.

Will be residents be allowed to use all the common areas on any of the floors? Yes. The calculations were broken down by floor because each floor contained a different number of units; however, the residents are free to visit all common areas.

Will all the residents be offered a separate storage room in the building? Yes. Storage is an add-on service and is available to all residents if they want it. In this building, approximately 75% would be able to sign-up for the storage. In other Clover properties, on average, 50% of the residents utilize this service. Enclosed garages are also available as an add-on and excluded from the unit size calculations.

Being that there were no public comments, moved and seconded by Board members Atchinson and Haase to close the Public Hearing.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Moved and seconded by Board members Grissett and Herman to uphold the ordinance language for usable floor area to exclude balconies from being considered as usable floor area.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Moved and seconded by Board members Atchinson and Sellers to agree with the interpretation put forth by the Vidya Krishnan's, Principal Planner - McKenna Associates, letter dated January 27, 2021, to include common-space/community space/amenities within the building as part of usable floor area for senior living only and request Planning Commission to amend the senior housing ordinance to add such clarification.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Director Best stated that the next step will be Director Power and Principal Planner Krishnan will put together findings of facts including the Motions that were approved tonight as well as the recommended interpretations for usable floor area and common areas to be added to independent senior living. Once assembled, they will then make a recommendation for the Planning Commission for this suggested change. This will allow Planning Commission to move forward on this interpretation and help get this project going.

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COMMENTS:

Board member Martin asked Director Power to distribute an updated BZA contact list.

ADJOURNMENT:

Moved and seconded by Board members Grissett and Haase to adjourn the meeting at 9:11 p.m.

Roll Call Vote: (7) AYES – Sellers, Grissett, Martin, Haase, Herman, Larocque, Atchinson
(0) NAYS

Motion Carried

Respectfully submitted,

Deanna Murphy, Acting Recording Secretary