



500 West Big Beaver
Troy, MI 48084
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Date: June 12, 2024
To: Members of the Troy Zoning Board of Appeals
From: Allan T. Motzny, Assistant City Attorney
Subject: Administrative Appeal – 4095-4115 Crooks

The applicant, Sterling Construction, Inc., is appealing a written decision/finding made in a letter dated April 9, 2024 by former City Manager Mark Miller serving as Zoning Administrator that the height of the applicant’s buildings as shown on the site plan for its Crooks Road development project (“The Westbrook”) do not comply with Section 5.06(E)(3)(c)(i) of the Zoning Ordinance. Specifically, the Zoning Administrator found:

“Multiple portions of the building(s) as measured from the foundation to the peak of the roof exceed 30 feet in height.”

The applicant is requesting the ZBA reverse this finding and claims it was based on an erroneous interpretation of the Zoning Ordinance.

ISSUE:

Section 5.06(E)(3)(c)(i) of the Zoning Ordinance provides:

“c. Height.

i. Any building, or portion of a building, on a parcel abutting a one-family residentially zoned parcel shall not exceed 2.5-stories, 30 feet in height.”

In the April 9, 2024 letter, the Zoning Administrator placed special emphasis on the phrase “portion of a building” as used in the foregoing section. Additionally, in an email set forth in the ZBA packet, the City’s planning consultant Benjamin Carlisle states “Section 5.06.E.3.c.i was intentionally written to include ‘portion of building’ to address situations where through grading or other means, an applicant would be able to exceed 2.5 stories or 30 feet.’ It was written to reduce impact and visually massing, especially towards adjacent single-family residential properties.”

The applicant claims the Zoning Administrator failed to take into the consideration the definition of “Building Height” as used in the Zoning Ordinance for buildings that have a gable roof. The applicant quotes from a portion of that definition as follows:

“The term ‘building height’ shall mean the vertical distance as measured from the established grade to the highest point of the roof for flat roofs, including walls or parapets that extend above the horizontal roof surface; to the deck line of mansard



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roofs; and to the average height between eaves and ridge for gable, hip, and gambrel roofs.”

According to the applicant, relying on the illustrations in the Zoning Ordinance following the definition of “Building Height,” its proposed buildings have gable roofs. The applicant points out the definition of “Building Height” does not mention that height should be measured from the “foundation” as suggested in the letter from the Zoning Administrator. The applicant contends that based on the definition of “Building Height” as used for gable roofs, the tallest portion of the buildings shown on the site plan is “29’-11 12/16”, below the 30-foot maximum permitted height.”

AUTHORITY:

Under MCL 125.3603, which is Section 603 of the Michigan Zoning Enabling Act (MZEA) the Zoning Board of Appeals (ZBA) is authorized to hear and decide questions that arise in the administration of the zoning ordinance. Section 15.04(C) of the Zoning Ordinance specifically authorizes the ZBA to hear and decide appeals from administrative decisions made under the Zoning Ordinance. In deciding this appeal, the ZBA may also interpret the applicable provisions of the Zoning Ordinance since Michigan Courts have held that a zoning board of appeals has the power to interpret the zoning ordinance which it must administer. *Sinelli v Birmingham Bd of Zoning Appeals*, 160 Mich App 649, 652; 408 NW2d 412 (1987).

PROCEDURE:

The Board should follow the same procedure as it would for any other appeal with one exception. After the applicant makes a presentation, the City Administration should be allowed to make a presentation in support of the administrative decision being appealed. Thereafter, a public hearing should be held and at the conclusion of the public hearing, the applicant and City Administration should be allowed rebuttal or clarification of public comments. After such rebuttal or clarification, the matter should be returned to the Board for deliberation and decision.

A majority of the members of the Zoning Board of Appeals must concur on a decision related to an appeal of an administrative decision under Section 15.03(B). Under Section 15.04(C) an administrative decision may be affirmed, reversed in whole or in part, or may be modified. To that end, the ZBA shall have all the powers of the Zoning Administrator from whom the appeal is taken. In reaching its decision, the ZBA shall only modify or reverse an administrative decision being appealed if one (1) or more of the following requirements are met:

- a. The administrative decision was arbitrary or capricious.
- b. The administrative decision was based on an erroneous finding of material fact.



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- c. The administrative decision constituted an abuse of discretion; or
- d. The administrative decision was based on erroneous interpretation of the Zoning Ordinance or zoning law.

In this appeal, since the applicant contends the decision of the Zoning Administrator should be reversed in whole based on an erroneous interpretation of the Zoning Ordinance, the ZBA should apply the Rules of Interpretation as set forth in Section 2.01 of the Zoning Ordinance, a copy of which is attached. In deciding whether there was an erroneous interpretation, this Board may also find it helpful to follow the guidelines used by courts in interpreting the language of an ordinance. Generally, when construing the meaning of an ordinance, each provision should be given effect and should be read to harmonize with all others. The primary goal of the interpretation of an ordinance is to give effect to the intent of the legislative body. The first criterion in determining intent is the specific language of the ordinance. The language should be construed reasonably, keeping in mind the purpose of the ordinance.

Proposed alternative resolutions are attached that may be utilized by the Board in making its final decision.

SECTION 2.01 RULES OF INTERPRETATION

For the purposes of this Ordinance, certain terms or words used in this Ordinance shall be interpreted as follows:

- A. The particular shall control the general.
- B. In the case of any differences of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
- C. The word "person" includes a firm, association, proprietorship, organization, partnership, trust, corporation, limited liability company, or other entity as well as an individual.
- D. The present tense includes the future tense; the singular number includes the plural, and the plural number includes the singular.
- E. The word "shall" is mandatory; the word "may" is permissive.
- F. The words "used" or "occupied" include the words "intended", "designed", or "arranged to be used" or "arranged to be occupied."
- G. A "building" or "structure" includes any part thereof.
- H. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either...or," such conjunctions shall be interpreted as follows:
 - 1. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
 - 2. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - 3. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- I. Terms not defined in this Ordinance shall have the meaning customarily assigned to them.

PROPOSED RESOLUTION AFFIRMING ADMINISTRATIVE DECISION

APPEAL OF ADMINISTRATIVE DECISION OF APRIL 9, 2024 FINDING THAT THE PRELIMINARY SITE PLAN FOR THE CROOKS ROAD DEVELOPMENT (“THE WESTBROOK”) DOES NOT COMPLY WITH SECTION 5.06(E)(3)(c)(i) ON THE BASIS THAT PORTIONS OF THE BUILDINGS EXCEED 30 FEET IN HEIGHT

Resolution #

Moved by:

Seconded by:

RESOLVED, That the April 9, 2024 decision of the Zoning Administrator finding that the preliminary site plan for the Crooks Road Development (“The Westbrook”) does not comply with Section 5.06(E)(3)(c)(i) on the basis that portions of the buildings exceed 30 feet in height is **AFFIRMED**.

The Zoning Board of Appeals makes the following findings and conclusions based on the written materials, comments, and testimony of the applicant’s representatives, other interested persons, professional consultants, and other factual material presented to the Board to assist with deliberation:

The applicant has not demonstrated the administrative decision was arbitrary or capricious, or that it was based on an erroneous finding of material fact, or that the decision constituted an abuse of discretion or that the decision was based on erroneous interpretation of the Zoning Ordinance or zoning law.

PROPOSED RESOLUTION REVERSING ADMINISTRATIVE DECISION

APPEAL OF ADMINISTRATIVE DECISION OF APRIL 9, 2024 FINDING THAT THE PRELIMINARY SITE PLAN FOR THE CROOKS ROAD DEVELOPMENT (“THE WESTBROOK”) DOES NOT COMPLY WITH SECTION 5.06(E)(3)(c)(i) ON THE BASIS THAT PORTIONS OF THE BUILDINGS EXCEED 30 FEET IN HEIGHT

Resolution #

Moved by:

Seconded by:

RESOLVED, That the April 9, 2024 decision of the Zoning Administrator finding that the preliminary site plan for the Crooks Road Development (“The Westbrook”) does not comply with Section 5.06(E)(3)(c)(i) on the basis that portions of the buildings exceed 30 feet in height is **REVERSED IN WHOLE**.

The Zoning Board of Appeals makes the following findings and conclusions based on the written materials, comments, and testimony of the applicant’s representatives, other interested persons, professional consultants, and other factual material presented to the Board to assist with deliberation:

The applicant has demonstrated the Zoning Administrator's decision was based on an erroneous interpretation of the Zoning Ordinance because building height should have been determined based on the definition of "Building Height" as used in the Zoning Ordinance for buildings with a gable roof and if building height is measured to the average height between eaves and ridges the maximum height for the proposed buildings does not exceed 30 feet.