

**CITY OF LUDINGTON
BOARD OF ZONING APPEALS
Minutes –November 27, 2007**

A regular meeting of the Ludington Board of Zoning Appeals was held on November 27, 2007 at the Ludington Municipal Building, 400 S Harrison St., Ludington, MI, and was called to order by Brian Purtee, Vice-Chairperson at 5:30 p.m.

PRESENT: Tom Tyron, Brian Purtee, Kirk Josvai, Joe Moloney and Bonnie Vaught.

ABSENT:

ALSO PRESENT: Recording Secretary Carol Ann Foote

ROLL CALL:

The roll call gave the above results.

AGENDA APPROVAL:

Brian Purtee added the election of officers and setting day, date and time of meetings to new business. A motion was made by Tom Tyron to approve the agenda, with additions, seconded by Joe Moloney. Motion carried unanimously.

MINUTES:

A motion was made by Bonnie Vaught to approve the minutes of September 20, 2005, as written, seconded by Joe Moloney. Motion carried unanimously.

PUBLIC HEARING:

To consider a request from FloraCraft Corporation for a 16 ½ ft. side yard setback variance in order to locate a refuse compactor on the north property line. The Ludington Zoning Ordinance #23-00, Section 400.14, requires a 25 ft. side yard set back in the M-1 (Wholesale and Light Industry District). The property location is: MANUFACTURERS, ADDITION ENTIRE BLOCKS 25 & 26, EXCEPT N 33 FT FOR ROADWAY. ALSO THE WEST 1/2 OF ADJACENT VACATED DELIA ST., also known as 1001 N. Rowe St.

Don Zwiefka, Project Engineer and Vic Burwell, Executive Vice-President of Operations represented FloraCraft Corporation. Mr. Zwiefka said that they were there to seek permission to locate a refuse compactor in the side yard set-back on the south side of Bryant Rd. He stated that the location was partially blocked by a row of trees that are next to Bryant Rd. The selection of that location occurred for a couple of reasons. Efficiency of FloraCraft is the first reason and trying to dispose of waste material close to the source that it is created. The position of the compactor allows us to get trucks on the property in a manner not to create blocking or stopping of traffic on Bryant Rd. We have reviewed that location with Allied Waste, our waste hauler, and have a letter of support from them. There is an email from Allied addressing the noise that is going to be created by the compactor. Mr. Zwiefka handed out a packet containing the letter, email and photos. The application to the Board asked what the hardship or practical difficulty is and he thinks that they have a compelling argument to locate the compactor in this position. He pointed out the drawing that showed the tank and compactor position. He showed the Board how the waste hauler would pull in off of Bryant and back up to the tank. The truck would drop the tank off at another location on the property and pick up the empty that it brought and puts it at the compactor. He pointed out the tree line, the curb line and the property line. The compactor is stationery and will have a chute that goes into the process area. He also showed a proposed eight foot fence on the south side of the tree line. He then showed pictures of the view to the east and west of Bryant Rd. Mr. Zwiefka read an email from the compactor manufacturer stating that a

comparable compactor would have a decibel rating of 76. He said that he took his sound meter to Bryant Rd. and stood on the south side. As cars passed on the south side, he was getting readings of 74 to 79 decibels. As cars passed going west, he had readings of 70 to 74 decibels. If the compactor runs at 76, there should not be any issues with the neighboring homes. He explained that the letter from Allied Waste was supporting the placement of the compactor and stating that it would improve the safety by not blocking Bryant Rd. The advantages of the placement of this is handling waste material close to the source and having trucks not backing off Bryant Rd. This year FloraCraft made a significant investment in the new warehouse and that has reduced truck traffic on Bryant Rd. We think that is the direction we should continue to go. He said that some of the storage has been moved further into the property. He stated that they were attentive to any concerns that their neighbors in Pere Marquette Township may have. In short, they have been good neighbors.

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Vic Burwell spoke to the Board members. He stated that they entered into this project without thinking about this particular situation. We found out that we might be infringing on the setback so we stopped working. When we added on the new \$700,000 addition, this was part of a continuous improvement plan that we sought funding from the state to try to figure out the best way to deal with our manufacturing process without infringing on things outside of our location. We now have one compactor that satisfies our three operation shifts and is located on the south side of the building. We are carrying material all the way through the factory to dump in that compactor made us sit back and look at other options. We never thought that the bun storage that we had on the outside of the building was taking more room than this compactor. We took a look at the debris blowing around and felt that we had to be a better neighbor. We added a \$25,000 storage space to move the buns to. We put the compactor in that space never thinking that we would need a permit for it. When we found out that we need a permit, we stopped the process and took the formal approach. This is why we are here tonight, and we would like to thank you for being here. We know that a financial hardship is not the only reason to make a request, but this particular addition, this compactor and location is the only place close to the area we will be doing the manufacturing. Without the compactor, we would be hauling debris through our shipping locations and other departments to get to the other location. The new warehouse on the east end is eliminating 90% of the traffic off of Bryant Rd. That eliminated the chance of a compactor at that location which was never even thought about because it is not close to the manufacturing. We have done a thorough review and this was the best location for safety, traffic and location next to the operation. This will be completely contained and will be cleaner than what it normally is. The fact that we have removed all the buns from the north end certainly has cleaned up that area.

Bonnie Vaught asked what buns were. Mr. Burwell said that they were the largest fabricator of Dow Chemical's product which is a raw material, polyurethane foam that is used in the craft industry. It comes in what is called "big buns" which is 24" high and 40" wide. You can store them outside because they are not harmed by the weather. We have now moved them to another storage area. Brian Purtee asked if they looked like Styrofoam. Mr. Burwell said that most Styrofoam would be white. These are green or brown.

Joe Moloney wanted to know if the existing building was non-conforming. He said that it looked to be already over the set back. Don Zwiefka said that it was over the setback on the west end. He

said that it was sitting at an angle. Mr. Burwell stated that there was another warehouse west of the building that was added approximately ten years ago. He said that they requested a setback variance at that time and it was granted. Joe Moloney asked if there would be any truck traffic on the north side of the container. He said that it looks to be about an eight feet area. Mr. Burwell said that there would not be any truck traffic on the north side. There are trees, a split rail fence and landscaping to the curb. Joe asked if the compactor was eight feet from the property line. Don told him that the request was for a 16 ½ ft. variance and that would place the compactor 8 ½ ft. from the property line. Joe stated that this would be an addition to the non-conforming structure. He said that the photo showed the truck facing Bryant Rd. Don said that the truck would be facing east and west.

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Joe Moloney said that in the request section 4, effect on you was very important. In FloraCraft's written response, there was nothing put in that section. He said that he wanted to discuss what the unique conditions were for their property opposed to other properties with the same zoning. Brian Purtee said that this was very important. They need to convince the Board why they cannot build within the Ordinance. Joe said not the building, but the land itself. Vic Burwell responded by saying that the proximity of the only other compactor is 300-400 feet to the south end of the building. This piece of property needs 16 ft. to locate the new compactor. That space is the only space that is in close proximity to probably 25% of the manufacturing activity that takes place. The unique situation is that the placement of the compactor in any other location would put it in a spot that would force us to carry our product through the factory the same way that we do now. What we are attempting to mitigate any non-value cost that we can. When we explored the situation with the compactor, we were finding that it was taking the equivalent of two people eight hours a day to move that particular scrap back and forth. So what is unique about that land is that it is in proximity to where the manufacturing facility is and putting it anywhere else would require taking the trash across the factory which we are trying to avoid. The customers that we are serving, such as Wal-Mart, has said that we need to look at ways to drive operational cost out of the product line. It is not going to cost any employment, but we will take these individuals and place them in operational positions.

Brian Purtee asked John Healy if the proposed 8ft. fence would require any special consideration. John said that if it was within the property line it would be a separate issue that would be dealt with through Carol Foote. Mr. Zwiefka stated that this was a proposed fence and he was aware that he would need a permit. We were looking at that because of the concerns of noise. He said that if you looked at the map, FloraCraft has expanded to the south and there is not much property around the area of concern. Our practical difficulty would be getting a truck in that area and keep it from backing up in Bryant Rd.

Bonnie Vaught said that there was a condition in the M-1 district for screening. She read section 400.9:5(4), required conditions for screening. She said that this would be required. She wanted to know if there was any information about the materials of the fencing. Don Zwiefka said that at this point they were proposing something solid and eight feet high. Vic Burwell stated that as good neighbors, they would make it as appropriate as possible. Bonnie said that she would suggest insulating it with Styrofoam. She said that she has serious concerns about the noise factor. Vic said that was the reason they sought decibel ratings so that we would be well within acceptable

standards. We were concerned about pickups there at all hours of the night like the concerns at House of Flavors. We will take appropriate steps. Bonnie said that House of Flavors was given greater restrictions than the Zoning Ordinance required. As a member of the Taps Committee, we did a study on the decibel reading of vehicles. A 76 reading is loud. She said she was amazed at how loud vehicles are in the City. She asked what time of the day the compactor would be used. She said that if she lived across the street, the sound of the compactor would get her attention. Vic Burwell said that was another reason they were going to erect a fence, as a sound barrier. He explained that the compactor was hydraulic in nature. It does not slam, but compresses the waste materials. The amount of time it will be running is not continuous. It would be activated around twenty times a day. It takes our machines eighteen minutes per cycle of the cutting process. You would accumulate the scrap for more than one cycle and dump it into compactor. He said by putting a fence up, it would eliminate the sound concerns. Bonnie pointed out that the compactor runs for ninety-one seconds. Don Zwiefka stressed the fact that the sound levels fall off at a distance. If the compactor had a decibel reading of 76, it should be under 70 across Bryant Rd. Bonnie asked if the compacting would be more of a squeeze than a ram. Don said that it was a slow moving compression action. Bonnie wanted to know what kind of material would be compacted. Mr. Burwell said it was the end pieces and scraps from the buns that they cut. Bonnie wanted to know if the compactor could run only in the daylight hours. Mr. Burwell said that the goal is to have only one shift. The daylight in the summer would be great. It is conceivable that we could restrict the operation hours. Brian asked Mr. Zwiefka to repeat the decibel measurements that he took on Bryant Rd. Brian stated that the compactor decibel level was not greater than the traffic. Bonnie said that their decision would have an effect long after they were gone. Mr. Burwell said that they were very concerned about the issues that were raised, but they would continue being good neighbors.

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Tom Tyron asked about the footprint of the factory. He wanted to know if all of the property was taken up. Do you have anymore room to expand? Mr. Burwell said that the only way they could expand would be toward the soccer field. We the expansion that was built with the freight situation, we do not see any further additions. He stated that over the last ten years they have acquired three new companies. That is why they expanded. Tom said that they could put the compactor elsewhere; it would just not make sense. He asked how far the compactor sat from the building. He said he looked at the apparatus that was hauled away not to be part of the building and would be the same as a trailer. Don said that it is about 4 ½ ft. from the building.

Brian Purtee read a letter from residents at 924 N. James. They are concerned about a decrease in property value, but they were not disputing the variance for the setbacks. Mr. Burwell said that there would be no loose debris and no odor. Everything is going to be enclosed. Mr. Zwiefka said that the waste haulers have asked that they put other debris in with the foam so it does not become compacted and hard to get out.

The recording secretary reported that 21 notices were sent to City of Ludington residents and 17 notices were sent to Pere Marquette Township residents. The only reply was the letter from 924 N. James St.

Close Public Hearing

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Brian Purtee told the members that they would now go through the variance score card. He said that this was a dimensional variance.

Practical Difficulty:

Bonnie Vaught said there was a practical difficulty and Tom Tyron and Kirk Josvai agreed. Joe Moloney said that he disagreed. He said that he was looking at property as land. There is nothing unique about the property. As far as the question four on the application, "*What are the unique conditions which apply to your property or request as opposed to other properties under your same zoning requirements?*" Joe did not feel that the question was answered. Brian Purtee said that he went to the site, but could not see what went on inside. He said he understands that the way the manufacturing is set up; they were trying to dispose of generated waste in a way that it does not impact the neighborhood by hauling it outside, in a way that does not create a safety hazard by taking it through a high traffic area and in a way for general safety. Practical difficulty is something that we always have to address, but sometimes it is hard to pin down. It is easier when you are dealing with residential. He then called for a vote. Bonnie, Kirk and Brian: Yes, Joe: No, Tom abstained

Detrimental to adjacent properties or neighborhoods:

Joe said that he did not think that it was detrimental to adjacent properties. Tom said that it was a process that has been going on and will continue. The vote was unanimous. The reason that it would not be detrimental: There would be no environmental effects and it would lessen truck traffic on Bryant Rd.

Is the variance in keeping with the intent and purpose of the Zoning Ordinance?

Joe Moloney said no. He said that it was already a non-conforming building. He read Section 600.2:1, Nonconforming Uses of Land, from the Ludington Zoning Ordinance. Bonnie wanted to know, when the building was placed on that property and zoned commercial, was it a non-conforming use. Carol Ann Foote told the Board that the property was zoned M-1, Light Industry, not Commercial. It is not a non-conforming use. The manufacturing use is allowed in that district. Bonnie asked if it could have been a non-conforming structure. Carol Ann told her that it was possible that it could be a non-conforming structure. Brian said that if the building is in the set-back, they would need to think about additional non-conformance. Carol Ann explained to the Board that the north side of the building was not non-conforming. What was being asked for was a variance for the setback. It has nothing to do with non-conformity. They want to place the compactor within the setback. Brian Purtee called a vote. Bonnie, Kirk and Brian: Yes, Joe: No, Tom abstained The reason that it is in keeping with the intent: The intent of the ordinance is to minimize impact on surrounding properties and if this variance is granted, would comply with that.

Does the alleged hardship or practical difficulty involve more than personal inconvenience and financial hardship?

Brian Purtee said that in his opinion, it is not a personal inconvenience. By not hauling trash to an outside location, they are trying to minimize the amount that can get into the neighboring properties. He said that he heard financial hardship mentioned, but the question is "more" than a financial hardship. I have heard safety, traffic, Bryant Rd. I feel like it is more than a financial hardship. Joe Moloney said that he was not convinced that it was more than that. Brian said that

| ~~certainly finances are involved. They are trying to stay competitive. They are also trying to keep their trash disposal contained so if there is any mess, it will be inside. They are trying not to run the trash through the manufacturing area. They are making an effort to channel the truck traffic on Bryant Rd. Joe said that he was concerned with the precedent they would set by granting this variance. I think it will open a can of worms. The ordinance is very clear about setbacks. He said he was not certain why this was overlooked in the original site plan. It is a significant addition. Tom Tyron said that it was hard to apply residential zoning to an industrial application. We are trying to treat this like a house on the block. This is old property and the footprint shows they are about maxed out in terms of expansion. Joe pointed out that the setbacks were different for manufacturing and residential. Tom stated that maybe they were not good enough. Maybe they should not have a setback. We should not overlook it, but that is why we are in existence. If we can find a way to rectify the situation, we should. If we can't, we can't. It is a whole different ball game when you are talking industrial. If someone in a residential area asked for this, there would be a hundred reasons why they could not do it. In an area that is an industrial zone, not even discounting the fact of how hard we are trying to get business, not saying that they can do anything they want, we have to find a way to help these people be successful. Joe said that he disagreed. As a Zoning Board, they are not here to assist anyone financially or make things easier for them to be financially successful. We are supposed to interpret the Ordinance and that is all. Tom said that he didn't say it was financial, it is practical. They are locked in land wise. Brian Purtee said that he understood what Joe was saying. He said that what they are asked to do could be called "spot rezoning". And that has to be done very, very carefully. We are not here to enforce the strict letter of the Ordinance. We are here to consider exceptions. No Ordinance can be written all encompassing to deal with every situation. What I have in my mind is "more than personal inconvenience and financial hardship". They are trying to find a way not to have the debris in the environment. Joe asked if that was a practical difficulty. Brian said that if you were trying to avoid a potentially hazardous situation, yes. Joe said that he was not convinced of this. Bonnie said that she did not see how improving safety would fall under personal inconvenience or financial hardship. The practical difficulty, if they do not do this, would be safety. Kirk Josvai said that there were also environmental issues. Joe wanted to know if this was going to create another bottleneck on the north end. I think that setbacks were designated for safety. I am concerned that they will be creating a safety problem by invading the setback area. Tom Tyron stated that they already had a loading dock on the other side and did not see this as a safety concern.~~

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Bonnie Vaught suggested that they address the hours of operation of the compactor and the fencing requirement. Brian said that the fence was not required. Carol Foote explained that they could make them install a fence as a condition ~~of the variance. Brian said that they needed to talk about restrictions. Bonnie said that they should limit the operations of the compactor to 7 a.m. to 7 p.m. Brian took a vote on the question of hardship or practical difficulty. Bonnie, Kirk, Tom and Brian: Yes, Joe: No~~

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Bonnie Vaught said that she would like to see the hours limited. Brian Purtee asked Don Zwiefka if they could live with that. Don said that the concern about the hours was tied to the noise level. Joe Moloney read the M-1 requirements regarding the decibel levels. He asked if they really wanted to restrict them as long as they were within the Ordinance. Bonnie told the members that ~~House of Flavors was restricted so it could be done. Brian said that maybe it already had been done.~~

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Bonnie Vaught made a motion to limit the hours of operation of the compactor to 7 a.m. to 7 p.m.
No support, motion died.

Bonnie Vaught made a motion to require a fence that would comply with Section 400.9:5 (4),
seconded by Brian Purtee. Motion carried 4-1 Bonnie, Kirk, Tom and Brian: Yes, Joe: No

Tom Tyron made a motion to approve the 16 ½ foot side yard setback variance. No support,
motion died.

Brian Purtee made a motion to approve the 16 ½ foot side yard setback variance with the
condition that a fence be constructed in accordance with Section 400.9:5 (4), seconded by Kirk
Josvai. Motion carried 3-1 Bonnie, Kirk, and Brian: Yes, Joe: No, Tom abstained

OLD BUSINESS:

None

NEW BUSINESS:

Election of Officers:

Joe Moloney made a motion to nominate Brian Purtee for Chairperson, seconded by Bonnie Vaught.
Motion carried unanimously.

Bonnie Vaught made a motion to nominate Joe Moloney for Vice-Chairperson, seconded by Brian
Purtee. Motion carried unanimously.

Bonnie Vaught made a motion to meet the third Tuesday of the month, when there is business, at
5:30 p.m. at the City of Ludington Municipal Building, seconded by Joe Moloney. Motion carried
unanimously.

COMMENT AND COMMUNICATIONS:

ADJOURNMENT:

The meeting adjourned at 7:30 p.m.

Respectfully submitted,
Carol Ann Foote, Recording Secretary