

**Township Use Only**  
 Petition #: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Fee Paid: \_\_\_\_\_  
 Tax ID #: \_\_\_\_\_

RECEIVED  
 NOV 04 2021  
 CHARTER TOWNSHIP OF NORTHVILLE  
 BUILDING DEPARTMENT

## Appeal of Administrative Decision Application

Publication*	\$100
Residential	\$100
Non-Residential	\$200
Special Meeting	\$1,000

\*Publication fee is required for all applications

40570 Five Mile Rd., Plymouth, MI 48170	B-1
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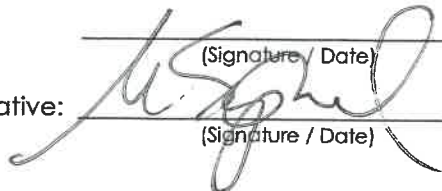
Name: Millie Shepherd			
Address: 15473 Fry St			
City/State/Zip: Plymouth, MI 48170			
Phone: 734-507-1071	Fax:	Email: srebeau@yahoo.com	
Name: Ghassan Taha, TGH Holdings, LLC Location:			
Address: 40570 Five Mile Rd.			
City/State/Zip: Plymouth, MI 48170			
Phone:	Fax:	Email:	

Petitioner and residents of Fry St. and Parklane hold that the Planning Commission acted capriciously and arbitrarily, and in doing so exhibited an abuse of the discretion vested in the body. Further, the commission failed to take into account the standards and factors outlined in the special land use § 170-30.1. Intent and § 170-30.4. Standards and § 170-41.4 Variances, D. Use variance.

### Application Signature

All correspondence and notices regarding the application will be transmitted to the petitioner. By signing this application, the petitioner is indicating that all information contained in this application is complete and accurate to the best of his/her knowledge, and gives permission for Northville Township officials, staff and consultants to inspect the property for the purpose of verifying information relative to the request. If the applicant is not the property owner, written authorization from the property owner is required.

Legal Owner:

  
 \_\_\_\_\_  
 (Signature / Date)

\_\_\_\_\_  
 (Print Name)  
 November 3, 2021  
 \_\_\_\_\_  
 (Print Name)

Project Representative:

November 4, 2021

Northville Township Zoning Board

Eric Lark  
Brian J. Doren  
Joseph LoPiccolo  
Gary Sixt  
Paul Slatin  
Paul Smith  
Chris Roosen

Hello,

We submit this zoning board appeal request regarding the Planning Commission's approval of special land use variance request Project number PSLU21-0002 40570 5 Mile Rd., Applicant Ghassan Taha, TGH Holdings and David Ganezer, GAV and Associates.

We ask the zoning board to hear our position that the requested Special Land Use variance requirements have not been met. We contend that the Northville Township Planning Commission failed to follow the intent and standards of the special land ordinance ARTICLE 30, Special Land Uses intent § 170-30.1 and § 170-30.4 Standards.

**Northville Township Special Land Use ordinances:**

**ARTICLE 30 Special Land Uses § 170-30.1.**

**Intent:** This Article sets forth a set of procedures and standards for special uses, which because of their unique characteristics require specific consideration. Special land uses are considered to be more intense, or potentially more disruptive, compared to uses which are permitted by right in a particular zoning district. These review procedures and standards are intended to regulate the use of land and site design based on characteristics of a particular use and to prevent adverse impact on adjoining or nearby properties.

***We contend that the planning commission did not give due weight to the intent of the zoning requirements because they did not adequately consider the adverse impact on adjoining or neighboring properties. Approval of this variance will have an adverse impact on the area in the following ways:***

- ***Significant increases in traffic***
- ***Increased odors/ pollution: emissions from vehicle***
- ***Noise: loud speaker systems in use until at least 10:30 PM in a residential area***
- ***Other activities which may endanger the public health, safety or welfare:***
  - ***safety issues with increased traffic on unpaved residential streets endanger pedestrians, children on bicycles or at play. The***

***streets that surround this setting are unpaved dirt roads without sidewalks or streetlights.***

**§ 170-30.4. Standards** The Planning Commission shall consider the following standards when reviewing a special land use request.

- A. Compatibility with adjacent uses. The proposed special land use shall be designed and constructed in a manner that is harmonious with the character of the adjacent property and the surrounding area. The special land use shall not create a significant detrimental impact, as compared to the impacts of permitted uses.

***We contend that the Planning Commission did not give weight to how the proposed Special Land Use variance requested will cause a demonstrable detrimental impact on the community. The proposed drive thru aspect of this variance request will create a significant detrimental impact that would not be present if the business is limited to those functions that fall within the zoning ordinance. This impact includes, additional noise and traffic, decreased property values, and safety concerns.***

- B. Compatibility with the master plan. The proposed special land use shall be compatible with and in accordance to the goals and objectives of the township master plan and any associated sub-area and corridor plans.

***The zoning ordinance is a law and the master plan should reflect those ordinances. Master plans should not require or encourage variances in order to be successfully implemented. Ordinances exist to protect the way of life, and property values of residents in the community and should not be routinely granted particularly at the expense of residents.***

- C. Traffic Impact. The proposed special land use shall be located and designed in a manner that will minimize the impact on traffic, taking into consideration pedestrian access and safety, vehicle trip generation, types of traffic, access location and design, circulation and parking design, street capacity and traffic operations at nearby intersections and access points.

***This variance would increase traffic significantly. The inclusion of the drive thru will result in increased traffic on side streets as customers are incentivized to use residential streets as shortcuts to avoid main thoroughfares. Overflow traffic from those waiting in long drive thru lines will spill over into the residential area, this will place pedestrians and children at increased risk of harm through a greatly increased traffic volume.***

D. Impact on Public Services. The proposed special land use shall be adequately served by essential public facilities and services such as streets, pedestrian or bicycle facilities, police and fire protection, drainage systems, refuse disposal, water and sewerage facilities and schools.

E. Compliance with Zoning Ordinance Standards. The proposed special land use shall be designed, constructed, operated and maintained to meet the intent of the zoning districts and the site shall be able to comply with all applicable ordinance requirements.

***We contend that this variance request does not meet the zone ordinance intent or standards.***

F. Impact on the Environment. The proposed special land use shall not unreasonably impact the quality of the natural features and the environment in comparison to the impacts associated with typical permitted uses.

***Drive thru fast-food establishments have been determined to be a significant source of emissions/ greenhouse gases. For this reason, increasing numbers of cities and municipalities have banned the further development of the type of establishment.***

G. Specific Special Land Use Requirements. The proposed special land use shall comply with any specific requirements relating to a particular use.

H. The Planning Commission shall also consider the following factors when reviewing a special land use.

1) The nature and character of the activities, processes, materials, equipment or conditions of operation typically associated with the use.

***Mr. Taha has stated that he needs the drive thru to be open until 11:00 because that last hour is significant to his revenue. This indicates there will be a significant volume of traffic during the after dark hours. The drive thru feature of the business, particularly after dark, is detrimental to the area, and creates undue safety concerns for residents of the area.***

2) Vehicular circulation and parking areas.

***As noted, a significant increase in traffic will impact the quality of life of residents. The impact of traffic to the setting will be much less if the variance is not given and the business is required to abide by the laws established. The current plan to allow cars to enter and exit through existing access points will result in a dramatic increase in traffic in our neighborhoods.***

3) Outdoor activity, storage and work areas.

4) Hours of operation.

***We contend that the hours of business would be of significantly less impact on the residents of the area if the applicant is required to work within established zoning laws. We further submit that the granting of a variance will have demonstrable detrimental impact.***

5) Production of traffic, noise, vibration, smoke, fumes, dust, glare and light

***Our position is that the use of loud speakers, car exhaust fumes, radios and the process of speaking very loudly to be heard over an outdoor ordering system is detrimental to the quality of life of residents.***

We ask that the Zoning board follow its own standards.

ARTICLE 41 Zoning Board of Appeals

#### **170-41.4 Variances**

**D. Use variance.** A use variance may be requested when a proposed use is not listed as a permitted or a special land use in the district in which the property is located. Approval of a use variance requires 2/3 of the entire ZBA membership (five votes).

Use variances shall **only be granted** when the applicant demonstrates that **all** of the following conditions exist.

(1) The proposed use is compatible with existing or planned uses on surrounding properties.

***It is not true that condition 1 has been met. While the B1 zoning allows for a sit down or take out restaurant the development of a drive thru is not compatible with the primarily residential zoning for this area and will have a significant detrimental impact of the quality-of-life and property values of Northville Township residents. Existing businesses in the area are low impact and do not negatively impact the community.***

(2) The site cannot reasonably be used for any of the uses allowed under current zoning.

***It is not true that condition 2 has been met. This land can be used for the purposes of a sit down or take out restaurant which are allowed in this setting without the need for a special land use variance, and which the appellants do not contest.***

***We contend that it is not the intent of the zoning rules to allow a variance because someone wants to develop a different type of business than that which is approved for the site. The standards have been set and applicants can exercise other options available in the community where the business model does not require a Special Land Use variance.***

(3) Public utilities and streets are sufficient to accommodate the proposed use.

(3) An unnecessary hardship exists on the subject property due to very unique

circumstances such as:

- (a) Exceptional narrowness, shallowness or shape of the property;
- (b) Exceptional topographic conditions or other extraordinary situation pertaining to the land, building or structure;
- (c) The use or development of the property immediately adjoining the subject property; or
- (d) Any other physical situation pertaining to the land, building or structure as determined by the ZBA.

(e) The requested use variance is the minimum necessary to permit a reasonable use of the land. (f) The conditions causing the use variance request were not created by any affirmative action of the applicant and would have existed regardless of ownership of the property.

The Zoning Board FAQ Northville township webpage provides the following information:

Q: Are variances easy to obtain?

A: No. Variances are intended to be difficult to obtain since they run contrary to the requirements of the Zoning Ordinance. There may be unusual circumstances, however, where the Zoning Ordinance is unnecessarily burdensome. Under these circumstances, variances are intended to provide relief to the applicant when the specific criteria are met.

Finally, we ask the board to consider the following as it makes its determination

The Michigan Municipal League in its Zoning Board of Appeals Handbook notes the following best practices:

- Variances are not intended to relieve requirements of the zoning ordinance that are simply preventing applicants from doing what they wish. Instead, the zoning board of appeals was intended to serve as a safety valve in those relatively rare circumstances where the application of the zoning requirements results in a practical difficulty (for nonuse variances) or unnecessary hardship (for use variances). However, variances approved without sufficient justification can turn the safety valve into a leak. Eventually, this will erode the overall purpose and effectiveness of the zoning ordinance, particularly when it is commonly known that the ZBA is likely to approve virtually any request. Chapter 1 page 8
- A zoning board of appeals known for easy approvals may find itself barraged with variance requests. As the word spreads that the ZBA grants almost any variance, the attitude among builders, attorneys, planners, and others who frequently advise property owners is, "Don't bother trying to meet the zoning ordinance, all you need to do is apply for a variance and you will get it." Chapter 2 Page 23

- As with any zoning action, the result of the proposed variance should not be harmful to adjacent properties. Potential harm could be in the form of restricted access or view, noise, lights or any other effect. It is appropriate for the ZBA to take the comments of the public into consideration to determine whether or not the variance may adversely affect nearby property or the neighborhood. (See Chapter 2.) Note, however, that simply because a variance is not harmful to the neighborhood does not mean that it meets all of the other applicable standards. etc. not normally experienced by property owners in similar circumstances. Chapter 3 Page 22

The appellants do not support that claim that the applicant has met the standard for the granting of a Special Land Use Variance and ask the zoning board to deny approval of this request.

We ask the board to consider if this is not a case where a drive thru variance should be denied what would the elements of a denial entail?

How will the zoning board decline other requests for similar variances if it allows one that so clearly does not meet the standard, and what are implications of this?

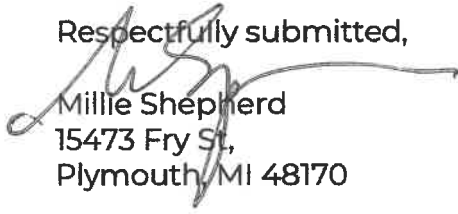
We believe there is ample evidence that this variance does not meet the standard identified in the code. However, should the zoning board determine that the Special Land Use variance should be granted we ask for the following relief.

- Require that the business have its own self-contained parking area and entry and exit points.
  - Do not allow the current plan that indicates the Dairy Queen will share the parking and entry and exit points with the existing businesses. This requirement will remove the ability of customers to travel the residential side streets as a shortcut to the business., and will decrease the likelihood that cars will line up on residential streets waiting to access the property. If there are concerns about the ability of the site to handle the drive thru traffic it should not be given a variance. The residential streets should not be used as a safety valve that will likely be needed multiple times, every day.
  - Do not allow the business to operate its drive thru after 9:00 PM. Requiring customers to come into the business will decrease the amount of noise that the residents are subjected to.

Make both of these requirements follow the land so that a future Planning Commissions or Zoning Boards cannot undue these reasonable accommodations based on the request of current of future § 170-41.4 Variances.

Thank you for your attention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

Millie Shepherd  
15473 Fry St,  
Plymouth, MI 48170



November 1, 2021

To whom it may concern,

Growing up in the Commons of Northville Township, I spent my summers making the special trip going to Top of the Cone on 5 mile. Now a current resident on Park Ln, I walk or ride my bike to Top of the Cone. The quiet country image and comfort of living in Northville Township is why I chose to purchase a home here. Building a Dairy Queen, especially one that includes a drive thru, affects the quality of life on my street. The large bright 'DQ' sign shining brightly through any home's window has a negative effect, especially for those who enjoy their windows open. Having a drive thru open, even until 10:30pm will not only bring more light pollution to the area but also the loud speaker from the drive thru, the speakers from cars and from those cars that aren't quiet.

Most businesses on this side of 5 mile close early. They do not have large signs, or bring heavy traffic. This side of 5 mile is quiet and a nice alternative to 6 mile. Park Ln already has a problem with traffic from those cutting through. Building a Dairy Queen with long hours at night will be a problem for the growing number of kids in the area or for those who walk their dogs. Our streets are dark, with most homes set far from the road.

There is no real positive benefit coming from building a Dairy Queen for residents living in this area, especially those on Park Ln. I don't understand why we need another ice cream shop so close to one another, that also has a drive thru. Why take away an independent owners business for something corporate, even if it's in Plymouth Township.

I hope, the council will reconsider the location and/or drive thru option for this area. Growing up here, a Dairy Queen at this location is tacky and a bit surprising it was even considered. Consider the residents who will have to put up with the cars, light pollution, sound pollution, and potential for increase in crime on our dark lit streets.

Thank you,

Christine Chojnowski