

BEDFORD TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING MINUTES (virtual)
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN
May 5, 2021

PRESENT:

JAKE LAKE, CHAIR
KYLE DERSCH, VICE CHAIR
MATTHEW ANGERER, PLANNING COMMISSION REPRESENTATIVE
JOE GORE, TOWNSHIP BOARD LIAISON
JEFF WILSON

EXCUSED:

NONE

ALSO PRESENT:

PHIL GOLDSMITH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH
JODIE RECTOR, PLANNING/ZONING ADMINISTRATOR
KATRINA INGRAM, PLANNING/ZONING, RECORDING SECRETARY

Lake called the Bedford Township Board of Zoning Appeals meeting to order at 7:01 p.m. The Pledge of Allegiance was said. Rector called the roll. Quorum present.

APPROVAL OF THE AGENDA

Motion by Dersch, supported by Wilson, to approve the agenda. Motion carried.

APPROVAL OF THE MINUTES

Motion by Angerer, supported by Dersch, to approve the minutes of April 5, 2021. Motion carried.

PUBLIC COMMENT (LIMIT 3 MINUTES)

None

NEW BUSINESS

- A. Open the public hearing for the appeal of Brett Albert, 1196 W Smith Road, Temperance, MI 48182, requesting a +/- 2-foot height variance and a +/- 640 square foot area variance to construct a 30' X 48' accessory building, per section 400.1903, "Accessory Buildings", in a R-2B, Single Family Residential Zoning District, on land described as 5802-570-042-00, 1196 Smith Road, Temperance, MI 48182.**

Rector reviewed the analysis, stating the applicant is seeking to construct a 30' X 48' (1440 square foot) and 16 feet in height accessory building. Per Section 400.1903, Accessory Buildings, a parcel having more than .25-acres but less than .5-acres is permitted a maximum square footage of 800 square feet in area and a maximum of 14 feet in height. Rector stated the applicant has indicated in the submitted letter, currently he is unable to store the camper behind the front building line of his home as required by ordinance, his intention is to demolish the 20' x 20' existing garage and build an accessory structure for storage of a 36' camper to be located further behind the home. Rector continued stating, the applicant states the restriction by ordinance of 14' and 800 square feet in area creates a hardship as his camper requires a 12-

foot door height and his intent is to provide storage of the camper inside the proposed accessory structure.

Rector informed the board at this time there have been no letters or calls of objection to the request. Rector noted should the variance request be granted, the variances required are a +/- 2-foot height variance and a +/- 640 square foot area variance, conditioned upon submitting for a building permit to demo the existing garage.

Motion by Gore, supported by Wilson, to open the public hearing at 7:04 p.m. Motion carried.

Brett Albert- 1196 W Smith- Applicant- Mr. Albert was available to answer any questions.

There was no public comment.

Motion by Wilson, supported by Gore, to close the public hearing at 7:09 p.m. Motion carried.

Lake stated he struggled with finding a practical difficulty for the request as it seems to be self-created. Kolar noted Mr. Albert is only 0.02 acre under the required lot size to allow for the size of the requested accessory structure. Angerer stated he would prefer to see the accessory structure instead of the camper being stored in the yard. Mr. Albert stated the accessory structure will primarily be used for storage of the camper but he also has a vehicle and other items he would be able to store inside and clear up his yard.

Gore agreed with Kolar and noted the subject parcel meets the required setbacks. Lake agreed with Kolar on the acreage margin being minor. Dersch noted a height waiver would need to be requested regardless with the way ordinance is written. Wilson agreed with Dersch on height waiver and also noted the request is self-imposed however practically it makes sense to be able to store camper inside.

Motion by Angerer, supported by Dersch, to approve the appeal of Brett Albert, 1196 W Smith Road, Temperance, MI 48182, requesting a +/- 2-foot height variance and a +/- 640 square foot area variance to construct a 30' X 48' accessory building, per section 400.1903, "Accessory Buildings", in a R-2B, Single Family Residential Zoning District, on land described as 5802-570-042-00, 1196 Smith Road, Temperance, MI 48182 due to the subject parcel being .02 acre under the required lot size for the requested accessory structure and the structure improving the neighborhood by cleaning up the subject parcel and conditioned upon submitting for a building permit and demoing the existing garage.

Roll call as follows:

Voting Aye: Angerer, Dersch, Gore, Wilson and Lake

Voting Nay: None.

Excused: None

Motion carried.

B. Open the public hearing for the appeal of Jose Bonilla, 6259 S Dixie Highway, Erie, MI 48133, requesting a variance to construct a 24' X 38' addition and a 22' X 24' garage addition to a prior legal nonconforming existing dwelling, per Article XIX(19), General Provisions, Section 400.1902.4, "Nonconforming lots, nonconforming uses of land, nonconforming structures, and nonconforming uses of structures and premises", in an I-3, General Industrial Zoning District, on land described as 5802-101-032-00, otherwise known as 6259 S Dixie Highway, Erie, MI 48133.

Rector reviewed the analysis, stating the subject property consists of 7.199 acres and the applicant is seeking a variance to construct a 24' X 38' living area addition and a 22' x 24' attached garage addition, to enlarge a prior legal nonconforming structure in an I-3, General Industrial Zoning District. Rector stated per Article XIX, "General Provisions" Section 400.1902 "nonconforming lots, nonconforming uses of land, nonconforming structures, and nonconforming uses of structures and premises states:

Intent: "It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival."

#4: Nonconforming structures: Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No such structure may be enlarged or altered in a way which increase its nonconformity. Such structures may be enlarged or altered in a way which does not increase its nonconformity.*
- b. Should such structure be destroyed by any means to an extent of more than 60 percent of its replacement costs, exclusive of the foundations, it shall be reconstructed only in conformity with the provisions of this Ordinance.*
- c. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.*

Rector noted while the proposed additions to the dwelling meets all required setbacks (Building Official review), the existing dwelling is a prior legal nonconforming structure, thus requiring a variance to enlarge the nonconformity.

Rector informed the board the Bedford Township Zoning Ordinance was adopted in 1977. Rector stated the applicant has indicated, in the submitted letter the home was built and used as a residential home since the 1920's and the adjacent uses have been living in harmony, to the South, Monroe County Water Supply System and North, Great Lakes Excavating (previously Jim's Garage). Rector continued stating the applicant has stated due to expanding their family there is a need for an additional bedroom, first floor laundry (currently in the basement), a bath on the first floor (only one bath located on second floor) and a desire for an attached garage for safer entrance to the home. Rector informed that the applicant has stated a residential use is the best use of the property due to Halfway Creek on the south side of the property, ravines and topography of the land.

Rector noted at this time no letters or calls of objection; however, one call was received to the Planning Department inquiring on the request but voiced no opposition or support. Rector

stated should the variances be granted the variances required are a variance to construct a 24' X 38' living area addition and a 22' x 24' attached garage addition, to enlarge a prior legal nonconforming structure in an I-3, General Industrial Zoning District.

Motion by Dersch, supported by Gore, to open the public hearing at 7:19 p.m. Motion carried.

Wayne Diebert- PTL Builders- Authorized Representative for Applicant-Mr. Diebert explained the applicant's hardship is the need for more space due to the family growing. The home has one bathroom on the upper level of the home and with family visiting they have difficulty accessing the bathroom.

There was no public comment.

Motion by Gore, supported by Wilson, to close the public hearing at 7:24 p.m. Motion carried.

Attorney Goldsmith stated for this request it is not necessary to prove a practical difficulty as the board is only deciding whether to increase the nonconforming use. The subject parcel is historically used as a residential home and this board has the exclusive jurisdiction to increase nonconforming lots or uses. Attorney Goldsmith continued stating the uniqueness of the parcel being larger and the surrounding topography somewhat supports the applicant's proposed request.

Lake asked if the variance for the requested changes is only due to the subject parcel having a residential use on an I-3, General Industrial, zoned parcel. Attorney Goldsmith confirmed that is correct. Dersch agreed with Attorney Goldsmith and is in favor of the proposed request. Lake also agreed adding if the parcel was residentially zoned there would be no variance required. Wilson agreed and supported the request.

Motion by Dersch, supported by Angerer, to approve the appeal of Jose Bonilla, 6259 S Dixie Highway, Erie, MI 48133, requesting a variance to construct a 24' X 38' addition and a 22' X 24' garage addition to a prior legal nonconforming existing dwelling, per Article XIX(19), General Provisions, Section 400.1902.4, "Nonconforming lots, nonconforming uses of land, nonconforming structures, and nonconforming uses of structures and premises", in an I-3, General Industrial Zoning District, on land described as 5802-101-032-00, otherwise known as 6259 S Dixie Highway, Erie, MI 48133 conditioned upon not increasing the non-conforming use and the existing dwelling maintaining as a single family residence and no additional families residing within the dwelling as a multiple family unit.

Roll call as follows:

Voting Aye: Dersch, Angerer, Gore, Wilson and Lake

Voting Nay: None.

Excused: None

Motion carried.

C. Open the public hearing for the appeal of Ray and Audrey Bashaw, 10366 Lewis Avenue, Temperance, MI 48182 requesting a variance of a four-foot fence requirement for a pool, to install an inground pool with a powered safety cover, per Section 400.901.14.f, “AG, Agricultural Zoning Districts”, on land described as 5802-011-020-10, otherwise known as 10366 Lewis Avenue, Temperance, MI 48182.

Rector reviewed the analysis, stating the applicant is seeking a variance of a four-foot fence requirement for a pool, to install an inground pool with a powered safety cover. Per Section 400.901.14.f, “AG, Agricultural Zoning Districts, states “for the protection of the general public, all areas containing swimming pools shall be completely enclosed by a fence not less than four feet in height above the surface of the ground”. The applicant is seeking the variation from the ordinance requirement, as per the 2015 International Building Code, Swimming pool and spa code, section 305 “Barrier Requirements” #2” states “swimming pools with a powered safety cover that complies with ASTM F 1346, provide an integrated level of protection against potential drowning through the use of physical barriers and warning devices”. The applicant advised in his submitted letter he is installing a Lantham Auto Cover that meets the exception of section 305 Barrier Requirements of the 2015 International Swimming Pool and Spa Code thus, not requiring a four-foot fence by ordinance.

Rector noted at this time, no letters or calls have been received and should the variance request be granted, the variance required is a variance of a four-foot fence requirement for a pool, to install an inground pool with a powered safety cover as permitted by the 2015 International Swimming Pool and Spa Code, Section 305 “Barrier Requirements”.

Motion by Wilson, supported by Angerer, to open the public hearing at 7:33 p.m. Motion carried.

Ray Bashaw- 10366 Lewis Avenue- Applicant-Mr. Bashaw stated his contractor advised with installation of a power cover, per building code a fence would not be required. Mr. Bashaw advised the Board the proposed location of the pool is approximately 1000 feet from the nearest home and felt installing of a fence would be an unnecessary cost. Mr. Bashaw continued stating he has security cameras around his property that alert him and the pool would be insured without a fence.

There was no public comment.

Motion by Gore, supported by Wilson, to close the public hearing at 7:37 p.m. Motion carried.

Lake asked Kolar if powered safety covers were recent and not updated and considered within the ordinance. Kolar stated he is unsure of when powered safety covers were permitted to serve within the Building Code but they have been permitted at least for the last 25 years. Kolar advised the variance request is a requirement of the local ordinance for installing of a pool. Lake stated a powered safety cover would appear to be just as secure of a safety feature as a fence requirement, when used properly. Kolar noted the importance of a fence requirement for most parcels but due to the uniqueness of this particular property, as it is quite large and very remote, Kolar noted the board may find it may not be necessary.

Dersch questioned if the owner will be alerted if the pool cover is left open, as most fences have a self-closing latch. Kolar noted the cover comes with a lockable switch that requires a key to access. Mr. Bashaw stated that when it is closed, it is locked and it does come with the option to operate cover with smart device. Mr. Bashaw reiterated he has multiple security cameras around his property. Angerer questioned if the pool was equipped with a water sensor that would alert the owner of a disturbance in the water if someone or something were to create water movement. Mr. Bashaw was unsure if it was equipped with such a sensor. Lake questioned if the pool will be inspected and Kolar stated the pool would be inspected before and after the cover is installed.

Attorney Goldsmith stated this is an issue of safety. Attorney Goldsmith added a fence can be scaled or left open and noted this safety pool cover can provide safety if used properly. Attorney Goldsmith noted each request has to be reviewed by its individual uniqueness and that should be included in any motion. Gore questioned if the Township would have any liability should the boards decision be to grant the request. Attorney Goldsmith stated as the proposed use of a safety cover is a recognized exception by Michigan Building Code there would be no liability. Angerer noted the parcel is remote but there is a park nearby and would feel more comfortable with a water disturbance alarm being installed. Attorney Goldsmith noted such an alarm can be included as a condition of approval. Dersch questioned the pool shape and if pool cover would completely cover the pool. Mr. Bashaw stated the proposed cover would completely cover the pool area. Mr. Bashaw advised the board due to the area being surrounded by woods, the pool will be covered when not in use to keep foliage out of the pool.

Motion by Gore, supported by Angerer, to approve the appeal of Ray and Audrey Bashaw, 10366 Lewis Avenue, Temperance, MI 48182 requesting a variance of a four-foot fence requirement for a pool, to install an inground pool with a powered safety cover, per Section 400.901.14.f, "AG, Agricultural Zoning Districts", on land described as 5802-011-020-10, otherwise known as 10366 Lewis Avenue, Temperance, MI 48182, per the 2015 International Building Code, Swimming pool and spa code, section 305 "Barrier Requirements" #2" states "swimming pools with a powered safety cover that complies with ASTM F 1346, provide an integrated level of protection against potential drowning through the use of physical barriers and warning devices. Due to the uniqueness of the large size parcel, the remoteness of the subject parcel from other residential dwellings and conditioned upon the installation of a water disruption sensor alarm.

The motion includes an accepted friendly amendment.

Roll call as follows:

Voting Aye: Gore, Angerer, Dersch, Wilson and Lake

Voting Nay: None.

Excused: None

Motion carried.

D. Open the public hearing for the appeal of Quail Meadows, LLC, 3309 Quail Meadows, Suite E, Lambertville, MI 48144 requesting a reduced parking requirement where full capacity hours of operation do not overlay in a multi-unit building, per Section 400.1904 "Off-Street Parking Requirements", in a C-1, Local

Commercial Zoning District, on land described as 5802-031-090-07 otherwise known as Pinnacle Eye Group, 6650 Summerlyn Lakes Road (corner Secor and Smith Roads), Lambertville, MI 48144.

Rector reviewed the analysis, stating the site consists of approximately 2.119 +/- acres and on October 9, 2019 the Planning Commission granted Site Plan Approval for Pinnacle Eye Group. Rector stated at that time the submitted site plan showed a total of 74 parking spaces where 70 spaces were required by ordinance. Rector informed the board it was discussed that the provided parking included only the identified medical use and should a second unit use move forward the subject site would require further review of the parking requirements on the use determined.

Rector informed the board the applicant has indicated the proposed use for the second unit will be DaCapo Coffee. Rector stated the applicant has provided an updated diagram layout of the parking lot and traffic flow as a drive-through is being proposed on the west side of the structure. Rector continued stating Planning and Building Departments have reviewed the submitted layout and during discussion determined additional directional signage, the possibility to move the order board to the north side of the structure, stripping of the flow of traffic (arrows to be changed) and the possibility of some type of curbing entering the site to continue the flow of traffic to one-way (not into the drive through lane) has been determined and discussed with Mr. Ellsworth as a representative for the site. The site plan also shows a pick-up window (north side) provided for Pinnacle Eye Group for glasses/contacts pick up only.

Rector continued stating the applicant is requesting a reduced parking requirement as the proposed use (coffee shop) does not overlay with the hours of full capacity. The applicant has advised DaCapo's flow of customers will primarily begin at 6AM and will consist of 60% in the drive thru, 20% of walk-in customers and 20% of online and phone pick up orders. The applicant indicated in the submitted letter that the morning rush traffic normally subsides around 9 am.

Rector informed the board, it should be noted that when calculated in accordance with the parking requirements as stipulated within Section 400.1904, Off-Street Parking Requirements, of the Zoning Ordinance, the following is required based on the square footage information provided to the Township:

21 spaces required by Ordinance for the proposed second use

- 16 parking spaces required per usable square footage of usable floor space (as a second story outdoor seating area (patio) is also being proposed)
- 5 parking spaces required for the food preparation area, plus ten front to back spaces for the drive-through window (provided on the submitted plan).

Per section 400.1904.7, Off-Street Parking Requirements, states *"In the instance of dual function of off-street parking spaces where operating hours of buildings do not overlap, the Board of Appeals may grant a special exception."*

Per section 400.220 Board of Appeals Jurisdiction #3 states “*permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.*”

Rector continued stating with the information that has been provided, parking spaces required for the site are calculated at 70 parking spaces for Pinnacle Eye Group and 21 parking spaces for DaCapo Coffee for a total of 91 spaces where only 74 total parking spaces are provided for the site. The applicant should verify the proposed three other units have been calculated within the overall usable floor space as approved by the Planning Commission for the Pinnacle Eye Group.

Rector continued stating if the Board should desire to make a motion to grant the request to reduce the required parking, any motion to approve should state, if there shall be a change in any uses or the uses become more intense the parking shall be recalculated.

Motion by Angerer, supported by Wilson, to open the public hearing at 7:55 p.m. Motion carried.

Mark Ellsworth-1421 Winding Way-Applicant-Mr. Ellsworth stated they are seeking to install some type of barrier against the building to prevent people from hitting the building. Mr. Ellsworth continued stating a sign will be installed on the north side to help to direct traffic flow around the building. Mr. Ellsworth mentioned the coffee shop has a proposed second story balcony to provide an outside patio area. Mr. Ellsworth informed the board after discussions of the proposed second story balcony with fire department the proposed balcony will offer an additional means of ingress/egress from the second floor of the building.

Rector informed the board after discussion with the applicant on the proposed signage, the applicant was informed a sign waiver will be required. Rector stated the applicant is aware the proposed additional signage will have to be presented to the Planning Commission for review and a decision.

Scott Heacock-1303 Sabra Rd- Applicant’s Architect- Mr. Heacock was available for comment.

There was no public comment.

Motion by Angerer, supported by Gore, to close the public hearing at 8:04 p.m. Motion carried.

Lake questioned the operating hours for Pinnacle Eye Group and Mr. Ellsworth stated he believed their hours of operation are from 9 am until 7 pm. Mr. Ellsworth continued stating the flow of traffic would be similar to their Lewis Ave location, where DaCapo’s traffic slows down as the Liquor Cabinet’s traffic flow increases. Dersch questioned if the DaCapo Shop on Lewis Ave sought a similar parking variance due to the size of the lot. Kolar and Rector were unsure but and did not recall discussions on the particular site. Lake questioned the number of tenants in the building. Mr. Ellsworth stated as he understood there would be a law office, an accountant, and one other tenant who has access on the north side.

Discussion continued on the hours of operation and when influx of traffic flow occurs for DaCapo Coffee Shop. Attorney Goldsmith clarified that any motion should include a change in any use or any use becomes more intense the parking may be recalculated depending on the use. Angerer voiced support of the use and keeping the traffic flow around the building to avoid congestion on Summerlyn Lakes Road. Lake asked for clarification on the permitted uses within C-1, Local Business District, should Pinnacle Eye Group ever vacate the property. Rector listed the permitted principle uses in a C-1, Local Business District and noted there are additional uses permitted with special approval. Lake stated that a more intense use would require more parking, such as a restaurant. Lake noted several of the other uses seem to be less intense. Rector clarified that should the use change, the parking required is calculated by the useable floor space for a specific use. Attorney Goldsmith further clarified any such change in use would be considered a major or material change in which a revision to the site plan would be required.

Motion by Angerer, supported by Gore, to approve the appeal of Quail Meadows, LLC, 3309 Quail Meadows, Suite E, Lambertville, MI 48144 requesting a reduced parking requirement where full capacity hours of operation do not overlay in a multi-unit building, per Section 400.1904 “Off-Street Parking Requirements”, in a C-1, Local Commercial Zoning District, on land described as 5802-031-090-07 otherwise known as Pinnacle Eye Group, 6650 Summerlyn Lakes Road (corner Secor and Smith Roads), Lambertville, MI 48144 conditioned upon any change in use or any use become more intense, the parking may be recalculated depending on the intensity of the changed use.

The motion includes an accepted friendly amendment.

Roll call as follows:

Voting Aye: Angerer, Gore, Dersch, Wilson, and Lake

Voting Nay: None.

Excused: None

Motion carried.

PUBLIC COMMENT-None

COMMISSION / STAFF COMMENT-

Rector advised the Board Members and the public the next Board of Zoning Appeals meeting will be Monday, June 7, 2021 as a variance request has already been submitted.

ADJOURNMENT – The meeting was duly adjourned at 8:17 p.m.

Respectfully submitted,

Katrina Ingram
Recording Secretary