

BEDFORD TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING MINUTES (virtual)
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN
JUNE 7, 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
DENNIS KOLAR, BUILDING OFFICIAL
JODIE RECTOR, PLANNING/ZONING ADMINISTRATOR
KATRINA INGRAM, PLANNING/ZONING, RECORDING SECRETARY

Lake called the Bedford Township Board of Zoning Appeals meeting to order at 7:00 p.m. The Pledge of Allegiance was said. Rector called the roll. Quorum present.

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES

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

PUBLIC COMMENT (LIMIT 3 MINUTES)

None

NEW BUSINESS

- A) Open the public hearing for the appeal of Dan Evans (Marion Evans), 6280 South Dixie Highway, Erie, MI 48133, requesting a +/- 2 1/2-foot fence height variance to construct an approximately twenty-foot section of a 6-foot tall privacy fence to be located in the front yard and +/- 4 1/2-foot fence height variance to construct an 8-foot tall privacy fence to be located in the remainder of the front yard, and a +/- 2 foot-fence height variance to construct an 8-foot tall privacy fence within a side yard, all requested variances are proposed on only the south side property line, per Section 400.1912, "Fences", in a R-3, Single Family Residential Zoning District, on land described as 5802-101-024-00, 6280 South Dixie Highway, Erie, MI 48133.**

Rector reviewed the analysis, stating the applicant is seeking to construct along the southern property line, a 6-foot fence in a +/- 20-foot section of the front yard, an 8-foot fence in the remainder of the front yard and an 8-foot fence in the side yard. Per section 400.1912.2a #1 "Fences", Fences within a front yard shall not exceed 3.5 feet in height and shall be restricted to decorative fences and per Section 400.1912.2a #2 "Fences", Fences within a side yard or rear yard shall not exceed 6 feet in height and shall not extend beyond the front building

line or required front yard setback, whichever is greater. Therefore, the applicant is seeking a +/- 2.5-foot height variance to construct a +/- 20-foot section of a 6-foot fence in the front yard, a +/- 4.5-foot height variance to construct an 8-foot fence in the remainder of the front yard and +/- 2-foot height variance to construct an 8-foot fence in the side yard.

Rector further stated, the applicant noted in his letter the proposed fence will be constructed of tan vinyl PVC and will provide a barrier from the neighboring property to the south. The applicant indicated due to the lack of maintenance and all the animals (ducks and dogs) continuously utilizing his property, he sees no other way to protect his property than to request to install a privacy fence on the entire south property line.

Rector informed the board at this time no letters or calls of objection have been received however, the applicant has supplied signatures of no objection from five of the surrounding properties.

Rector noted should the variance request be granted, the variances required are:

- +/- 2.5-foot height variance to install a +/- 20 ft section of a 6 ft fence in the front yard
- +/- 4.5-foot height variance to install an 8 ft fence in the remainder of the front yard
- +/- 2-foot height variance to install an 8 ft fence within the side yard
- Requested variances are located on the south property line only

Motion by Angerer, supported by Dersch, to open the public hearing at 7:05 p.m. Motion carried.

Dan Evans- 6280 South Dixie Highway - Applicant- Mr. Evans was available to answer any questions.

Wilson joined the meeting at 7:08 p.m. due to technical difficulties.

There was no public comment.

Motion by Gore, supported by Wilson, to close the public hearing at 7:12 p.m. Motion carried.

Lake questioned the applicant if attempts had been made to contact authorities regarding animal control issues and why the applicant was requesting an 8-foot fencing instead of a 6-foot fence. Mr. Evans stated he has resided on the property for a long time and the neighbors have made no attempt to resolve any of his issues. Mr. Evans further stated in his opinion a 6-foot fence would not provide enough of an appropriate barrier.

Angerer questioned if the neighboring property to the south supported the request. Mr. Evans stated he has attempted several times to contact the maintenance manager for the property but never was able to make contact. Gore agreed that the neighboring property has had a history of blight and other issues as he was called out there often as a police officer. Gore voiced support for the variance. Lake agreed with Gore stating multiple attempts have been made to try to resolve the issue with no remedy reached. Lake stated the applicant seems to have a practical difficulty provided by the inability to make contact with the neighboring property owner, the issues being out of the owners control to resolve and the applicant has provided neighboring support for the request. Dersch agreed.

Motion by Gore, supported by Angerer, to approve the appeal of Dan Evans (Marion Evans), 6280 South Dixie Highway, Erie, MI 48133, granting a +/- 2 1/2-foot fence height variance to construct an approximately twenty-foot section of a 6-foot tall privacy fence to be located in the front yard and +/- 4 1/2-foot fence height variance to construct an 8-foot tall privacy fence to be located in the remainder of the front

yard, and a +/- 2 foot-fence height variance to construct an 8-foot tall privacy fence within a side yard, all requested variances are proposed on only the south side property line, per Section 400.1912, "Fences", in a R-3, Single Family Residential Zoning District, on land described as 5802-101-024-00, 6280 South Dixie Highway, Erie, MI 48133 as there are ongoing issues of blight with lack of animal control on the neighboring property to the south, supported as the applicant has had several failed attempts to contact said property owner.

Roll call as follows:

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

Voting Nay: None.

Excused: None

Motion carried.

- B) Open the public hearing for the appeal of Megan & Paul Schwirzinski, 4173 West Rauch Road, Petersburg, MI 49270, requesting a variance to construct a 80' x 120' riding arena and a 26' x 38' accessory building both to be located in a front yard, Per Section 400.1903 "Accessory Buildings" and a variance to permit a one-family dwelling quarters to be attached to an existing accessory building to continue to serve as a secondary living quarters on one parcel, Per Section 400.901 "Principal Uses Permitted" in an AG, Agricultural Zoning District, on land described as 5802-006-012-20, otherwise known as 4173 West Rauch Road, Petersburg, MI 49270.**

Rector reviewed the analysis, stating the parcel has 328.4 feet of frontage with a depth of 1,411.86 feet, approximately 11.75 acres. There is an existing dwelling and an existing accessory building in the front yard developed on site. The existing accessory building within the front yard was granted a variance on December 20, 1993, where the applicant at that time requested to live in the attached garage area of the new dwelling while the rest of the home was being built as all utilities were installed and to allow for the accessory building to maintain in the front yard and build by the shared pond on site. On April 8, 2021, the applicant submitted for a building permit to construct an addition to the "second living quarters attached to an existing accessory building" and to construct an 80' X 120' riding arena and a 26' X 38' pole barn both located in the front yard. The Planning and Building Departments advised the applicant a second living quarters would not be a permitted use and the proposed location of the riding arena and pole barn would be considered a front yard and a permit could not be obtained without first seeking a variance from the Board of Zoning Appeals.

Rector stated the 3 requested variances are:

- 1) The applicant is seeking a variance to construct an 80' X 120' riding arena to be located within the front yard in front of the existing accessory building. Per Section 400.1903 "Accessory Buildings" accessory buildings shall not be erected in any minimum side yard setback nor in any front yard pursuant to the Schedule of Regulations. The proposed riding arena is located +/-142 feet back from the road and +/- 575 feet from the front of the existing dwelling. The applicant is seeking to construct a riding arena as the intent is to have a public stable. Per Section 400.903.3 Principal uses permitted subject to special approval, a public stable involving more commercial or public activity than the boarding of horses, not owed by a person living on the lot or premises where the public stable is located requires a full site plan and special approval process, thus requiring a variance to allow a riding arena to be constructed in the front yard, to determine the location prior to moving forward through the site plan and special approval process. The applicant has stated the proposed arena area is due to the fact the existing home is a good

distance back and the front of the property, where the existing accessory building is located, has been utilized for boarding of horses for at least 60 years.

- 2) The applicant has indicated in the submitted letter, one of the main reasons when purchasing the home in November of 2020 was due to an attached living quarters to the existing accessory building and it being able to serve as a living quarters for her aging mother. The applicant noted she was informed that the living quarters has had tenants for at least the past thirty years. As a separate secondary living quarter would not be permitted on one parcel, the Planning Department proceeded with further research of the property and was able to obtain further information. While there were no findings of any permits or a certificate of occupancy for the secondary living quarters, in speaking with the Assessing Department (Therese Vitale) it was verified the property is being assessed for two residential buildings and sketched on the assessing record card as an apartment, thus the variance request to allow an existing second living quarters attached to the existing accessory building to serve as a secondary living quarters on one parcel.
- 3) The applicant is seeking a variance to construct a 26' X 38' pole barn to be located within the front yard. Per Section 400.1903 "Accessory Buildings", accessory buildings shall not be erected in any minimum side yard setback nor in any front yard pursuant to the Schedule of Regulations. The proposed pole barn will be located in front of the existing dwelling approximately +/- 750 feet from the road and +/- 57 feet in front of the existing dwelling. The applicant has stated the proposed structure will provide an area for her husband to store tools, provide an area for his hobby of restoring vehicles and lawn care storage.

Rector noted the applicant has supplied two letters of no objection to the requests including support to allow the existing secondary living quarters to remain from neighboring properties.

Rector informed the board should the variance request be granted, the variances required are:

- A variance to construct an 80' x 120' riding arena to be located in the front yard
- A variance to construct a 26' x 38' accessory building to be located in the front yard
- A variance to permit a one-family dwelling quarters attached to an existing accessory building to continue to serve as a secondary living quarters on one parcel

Motion by Dersch, supported by Gore, to open the public hearing at 7:21 p.m. Motion carried.

Megan and Paul Schwirzinski- 4173 W Rauch Rd- Applicant- Mr. & Mrs. Schwirzinski were available for comment.

There was no public comment.

Motion by Angerer, supported by Dersch, to close the public hearing at 7:32 p.m. Motion carried.

Lake questioned the restrictions for the size of the pole barn and riding arena, as the property is zoned Agricultural and has plenty of acreage. Kolar stated the structures must meet the setbacks as the size is permitted however the location of the buildings in the front yard is where the variance request is required. Discussion continued on the distance of the home from the property line and existing accessory structures. Lake stated building the arena and pole barn in what would be the rear yard may not provide enough appropriate space for facilities nor to build appropriate infrastructure to access the facilities. Angerer noted the septic field is also located in the rear of the existing dwelling. Dersch agreed, adding installing a driveway across the front yard could block the view of the pond. Dersch noted it would not be an ideal location and it is more practical to

have pole barn adjacent to the existing garage. Lake questioned if the riding arena will be attached to the existing accessory building. Mr. Schwirzinski stated the two structures will be attached by a 6-foot enclosed walkway in order to keep the horses covered in the rain and during the winter.

Lake questioned the opinion of the board on the second living quarters attached to the existing accessory structure. Dersch questioned the inspection procedure to be completed to issue a certificate of occupancy. Kolar stated as the home is in existence and he would not be able to complete a full inspection. Kolar stated he is uncertain of when it was last utilized, as the attached dwelling was in disrepair when he last visited the site. Mr. Schwirzinski stated there was a tenant occupying the quarters when they purchased the property. Mr. Schwirzinski added the tenant was then given 30 days to vacate, as the intent was to be renovating the entire structure. Mr. Schwirzinski noted during renovation of the structure it would include updating all the electrical and plumbing which would be able to provide the Building Official to properly inspect the changes. Dersch voiced support for renovating the second living quarters so a proper inspection can be completed.

Lake stated the applicant seems to have a practical difficulty due to the existing location of the dwelling and septic field on the property. Lake also supported the second living quarters as it has been in existence and to not allow the continuance would be a disservice to the new property owner. Dersch questioned the well and septic for the second living quarters. Mr. Schwirzinski stated the second living quarters is connected to the well for the main dwelling but has its own septic. Angerer stated the proposed structures add value to the property without placing the structures in the view of the home.

Motion by Angerer, supported by Dersch, to approve the appeal of Megan & Paul Schwirzinski, 4173 West Rauch Road, Petersburg, MI 49270, to construct a 80' x 120' riding arena and a 26' x 38' accessory building both to be located in a front yard, Per Section 400.1903 "Accessory Buildings" and a variance to permit a one-family dwelling quarters to be attached to an existing accessory building to continue to serve as a secondary living quarters on one parcel, Per Section 400.901 "Principal Uses Permitted" in an AG, Agricultural Zoning District, on land described as 5802-006-012-20, otherwise known as 4173 West Rauch Road, Petersburg, MI 49270, due to the existing location of the pond, location of the main dwelling, location of the well and septic and the prior length of time of the existing use of the secondary living quarters on the property, all requests supported with letters of no objection from the surrounding neighbors. The secondary living quarters approval is contingent upon a building permit application, completing all required inspections during renovations and obtaining an approved certificate of occupancy, subject to the existing well and septic of the secondary living quarters obtaining approval from Monroe County Environmental Health Department.

The motion includes an accepted friendly amendment.

Roll call as follows:

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

Voting Nay: None.

Excused: None

Motion carried.

- C) Open the public hearing for the appeal of Jordan Hartford, 1737 Center Drive, Temperance, MI 48182 requesting a two-foot variance distance between adjoining property lines to install an above ground pool, per Section 400.401.7.b, "R-1 through R-3, One-Family Residential Zoning**

Districts”, in an R-2A, One-Family Residential Zoning District, on land described as 5802-580-005-10, otherwise known as 1737 Center Drive, Temperance, MI 48182.

Rector reviewed the analysis, stating the applicant is seeking a +/- 2-foot separation setback variance between adjoining property lines to install an above ground pool. Per Section 400.401.7.B, there shall be a minimum distance of not less than 10 feet between adjoining property lines, or the alley right-of-way and the outside of the swimming pool wall. The proposed location of the pool is 8 feet from the adjoining property line to the south, thus requiring a +/- 2-foot separation setback variance to the adjoining property.

Rector further stated, the applicant has stated in the supporting letter a hardship due to the depth of the property and the existing structure locations; he has a very limited area to install a pool. The applicant has provided a letter of no objection signed by the neighboring property to the west as well as the neighboring property to the south. At this time, no letters or calls of objection have been received.

Rector informed the board, should the variance request be granted, the variance required is a +/- 2-foot separation setback variance from the adjoining property

Motion by Dersch, supported by Wilson, to open the public hearing at 7:40 p.m. Motion carried.

Jordan Hartford & Krysta Carter- 1737 Center Drive- Applicant- Mr. Hartford & Ms. Carter stated they wish to place the pool in the only spot feasible due to the narrowness of the property.

There was no public comment.

Motion by Gore, supported by Dersch, to close the public hearing at 7:43 p.m. Motion carried.

Lake questioned if a deck would be constructed around the pool on the southern side and if that would affect the setback. Mr. Hartford stated they are not looking to build the deck on the southern side of the pool and wish to extend the existing deck on the eastern side of the pool. Kolar stated the deck can be 5 feet from the property line. Kolar added the owner would be able to build an approximately 3-feet of additional decking should they desire. Discussion continued on the layout and having support of the property to the south.

Lake questioned if the owner had considered a smaller pool to be able to meet the setback requirement. Mr. Hartford stated in general it was difficult to find and purchase a pool. Mr. Hartford continue to state they purchased the smallest one possible that was available. Angerer agreed with the applicant stating a 24-foot pool is a smaller pool size. Wilson agreed. Wilson added that even a smaller pool could cause issues with maintenance such as purchasing liners and other materials as they become more difficult to locate with unique pool sizes. Gore agreed. Gore questioned the length of a potential variance approval and if it maintains with the property. Kolar stated the variance is granted for the life of the pool as long as the pool is maintained. Dersch stated the property has a practical difficulty with the narrowness of property in relation to the neighboring properties. Lake agreed. Lake inquired if the subject property was more of an unusual lot size. Kolar stated the subject property structures are currently close to the minimum requirements on setbacks.

Motion by Dersch, supported by Angerer, to approve the appeal of Jordan Hartford, 1737 Center Drive, Temperance, MI 48182 for a two-foot variance distance requirement between adjoining property lines to install an above ground pool, per Section 400.401.7.b, “R-1 through R-3, One-Family Residential Zoning Districts”, in an R-2A, One-Family Residential Zoning District, on land described as 5802-580-005-10,

otherwise known as 1737 Center Drive, Temperance, MI 48182, due to the unique size and narrowness of the parcel, having a somewhat smaller rear yard and letters of support from the adjacent property owners.

Roll call as follows:

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

Voting Nay: None.

Excused: None

Motion carried.

- D) Open the public hearing for the appeal of Andrew Nycz, Mulch King, 2124 Rood Street, Toledo, Ohio 43613, requesting a variance of the requirement of the perimeter of the entire site utilized for composting operations be screened and buffered by means of plantings, and a variance of the requirement of the perimeter of the entire site shall be fenced, per Section 400.1502.5.bb.cc, “Principal uses permitted subject to special approval for Commercial Composting Facilities”, in an I-2, Light Industrial Zoning District, on land described as 5802-035-075-00, otherwise known as 110 W. Smith Road, Temperance, MI 48182.**

Rector reviewed the analysis, stating due to non-compliance with the Site Plan Approval with Special Approval as granted on September 27, 2017, and the removal of the natural tree buffer to the East along Telegraph Road that was approved in lieu of the ordinance-required plantings and fencing, the applicant is submitting an amended site plan to be considered by the Planning Commission. However, additional variances are required prior to action being taken by the Planning Commission. The applicant requested three variances on February 1, 2021 where all three were denied.

Rector stated the applicant is requesting two new variances at this time:

1. Variance 1503.5.bb – This section of the ordinance requires *“the perimeter of the entire site utilized for composting operations to be screened and buffered by means of planting a double row of evergreens six to eight feet in height at planting, with no more than a 15-foot spacing and offset by 8 feet.”*

Rector stated the applicant is seeking a variance along the west property line where it abuts a residentially (RM-2) zoned parcel under the same ownership. On September 12, 2017, the BZA suggested the Planning Commission require a screening of a 3’ berm and a mix of tree line to be installed and meet the height standards of the submitted plan. The Planning Commission followed the BZA recommendation and approved the site plan containing a treelined 3’ berm to meet the requirements of the zoning ordinance. The landscaping berm was not installed along the west property line; however, the berm was installed along the south property line, but does not meet the minimum planting requirement. The applicant is requesting an approximately 850-foot variance south of Indian Creek on the west side, to remain with the existing heavily wooded area on the property, leaving approximately 100 feet of existing berm to be screened by installing a mixture of evergreen trees and shrubs and to install a 3-foot berm with a mixture of plantings to continue on the south and east side to the existing remaining wooded area on the eastern side. The Owner, Andrew Nycz stated he has had direction from EGLE that stated they are not permitted to install the berm and screening as they obtained an initial opinion from NRM and EGLE that tentatively located the wetlands along this property line. The applicant is requesting the Board take into consideration the previous portion of the motion from February 1, 2021 where the request was denied, however it was granted to exclude those areas on the north and east side of the property where the heavily wooded tree line was not removed.

2. Variance 1503.5.cc – This section of the ordinance states “Access to the site shall be controlled to prevent unauthorized dumping during non-business hours. The perimeter of the entire site shall be fenced. The fence shall be a minimum of six feet in height and not to exceed a maximum as set by the Planning Commission in connection with its site plan review. The fencing required by this section that is contiguous to a residential zoning district and/or an agricultural zoning district used residentially shall be a solid vinyl coated decorative fence or the equivalent. Such fence shall be placed behind the buffer area required by this Ordinance. Access points to the site shall be controlled by locked gates to prevent unauthorized entrance. The use of a barbed, razor, or electrified fencing shall be prohibited.”

Rector stated at this time the applicant is requesting a renewed variance, as submitted on the original approved site plan approval, to allow the proposed 3’ berm and mix of planting barrier, as submitted, if approved, and the existing roadside ditch and the depth of the right-of-way to provide a natural barrier to prevent unauthorized access and dumping to serve as the requirement in place of the minimum of a six foot in height fencing of the entire perimeter of the site by ordinance.

Rector noted the submitted James S. Jacobs Architects’ letter clearly identifies the variances that are being sought at this time, states the requirements of the ordinance, and provides the detail of what the applicant is seeking.

Rector further explained, once the applicant has completed the variance process, the applicant will again be required to go through the Site Plan Approval process for the amended site plan. No public hearing will be required, as the Special Approval use is still valid. Rector advised the Commission; the Planning Department had encouraged a visit to the site prior to the meeting.

Motion by Gore, supported by Angerer, to open the public hearing at 7:51 p.m. Motion carried.

Jim Jacobs-25 Washington St-Applicant’s Architect- Mr. Jacobs noted that previously the applicant had requested no screening along the southern and eastern edges of the property, whereas now the applicant is requesting an alternate style of screening similar to what was previously approved along the entrance way on the southern property line. The applicant would like to install a 3-foot berm with a mix of trees and plantings along an approximately 100-foot area of the south western portion and to continue on the south side moving east to the remaining existing tree line to the east side of the property. Mr. Jacobs then added the remaining northerly portion on the west side a variance from landscaping and buffering/screening due to existing wetlands.

Andrew Nycz-2124 Rood Street-Applicant- Mr. Nycz was available for comment.

Tim Churchill - Applicant’s Legal Counsel- Mr. Churchill was available for comment. Mr. Churchill made no comment at this time, however requested to make comment later in the meeting.

Mike Kott-6505 W Bancroft- Mr. Kott stated he owns property in Bedford Township. Mr. Knott voice his opinion that Mr. Nycz offers and provides a great service to the citizens of Bedford Township.

Motion by Gore, supported by Dersch, to close the public hearing at 8:06 p.m. Motion carried.

Gore stated he has attended several meetings with the applicant. Gore advised one of those meetings included the Township staff, applicant’s architect and Mr. Steiner, Township Trustee. Gore voiced opinion that meeting was very productive. Gore continued to state in that meeting further clarification and information was provided

on the applicant's request. Gore stated the applicant has provided the requested letter including an email from EGLE stating there are regulated wetlands on the western property line and included concerns that an urban berm would impact the wetlands. Gore questioned as to whether a variance would still be required on western property line as it is impacted by the wetlands. Rector referred to Attorney Goldsmith for guidance on the wooded area and the portion of the west side being under the jurisdiction of the state. Rector further explained the applicant's request for the berm and plantings on the south side is due to the berm never being installed as previously approved. Attorney Goldsmith agreed a variance would still need to be sought, however the existence of the wetlands, as determined by the survey conducted on the site and the opinion issued by EGLE, would support a practical difficulty for the applicant, should the Board's desire be to grant the request.

Discussion occurred as to if trees were removed on the western side of the property and Mr. Jacobs clarified the subject parcel was open on the western side and the trees on the western side are located on the adjacent parcel which is also owned by Mr. Nycz, with a few trees potentially on the subject parcel. Mr. Nycz clarified no trees have been removed from the western side of the subject property and the adjacent parcel has about a 20-foot buffer of tree line along the eastern side. Mr. Nycz explained he had intended to build a home on the adjacent parcel and wanted the tree line to serve as screening/buffering. Dersch noted the previously approved screening to be located on the south side of the property and questioned why it was never installed as approved. Mr. Nycz explained a survey obtained by the previous owner was used and the landscaping and berm as approved was installed, however the survey grading was incorrect by about 3-feet. Mr. Nycz continued to inform the Board consequently when the commercial approach was installed it was 3-feet higher than originally proposed to ensure proper drainage. Mr. Nycz went on to explain that the change in grade for the entrance impacted the height of the berm. Mr. Nycz stated in his opinion the berm and landscaping that were installed are still existing and look appealing. Dersch thanked the applicant and questioned the practical difficulty regarding the fencing request as it has been requested in the past. Mr. Jacobs explained the applicant is seeking an alternate style of screening, not an absence of screening. Mr. Jacobs informed this type of screening would provide a softer approach than a solid vinyl fence along the south and east lines. Mr. Jacobs further explained as far as a practical difficulty the applicant feels a softer approach is more practical and a more landscaped style buffer is more beneficial than a hard line created by a vinyl fence. Mr. Nycz agreed and stated the remaining tree lines are located in 100-year floodplain and wetland area and could not be removed. Mr. Nycz further stated opinion that a landscaped berm would be more appealing in comparison to the screening of a 300-foot-long white vinyl fence. Angerer questioned if existing logs, which appear to be dead, around the perimeter of the property would be considered landscaping or would they be removed. Mr. Nycz stated the logs would be removed. Mr. Nycz noted the logs were only installed as a method of keeping people from accessing the property after hours.

Lake requested clarification on the ordinance requirements of berms and plantings being required for screening purposes, while the fence requirement is a security measure to keep people from accessing the property after hours. Rector stated that is correct. Lake stated as far as aesthetics, the applicants request for plantings and berms is understandable, however what will keep people from trespassing after hours. Mr. Jacobs stated that in the original request that was discussed and the existing southeastern corner along with the wooded tree line was thought to be an appropriate barrier. Mr. Jacobs noted as there has been removal of the trees on the eastern portion, the applicant believes the 3-foot berm and plantings offer the same measure of protection. Mr. Jacobs further explained the owner is not concerned about a security type barrier, such as a fence, as the berm and plantings would prevent unauthorized vehicle access from dumping as what the applicant believes the intent is of the ordinance. Mr. Nycz further explained the property has a ditch that runs along Smith Road and there is about 200 feet on Telegraph where the ditch does not run and the 3-foot berm and plantings would serve as a barrier. Lake agreed that the ditch acts as a deterrent for unauthorized access. Angerer stated from his recollection of the approval the original request served a dual purpose for security and a landscape barrier to

prevent as a security measure and to serve as a landscaping barrier to prevent seeing the composting from the road.

Mr. Gore questioned the original approval of a 3-foot berm on the south side of the property and if it was ever installed. Rector confirmed a 3-foot berm from grade should have been installed and as Mr. Nycz had explained the installation of the approach changed the grade so the 3-foot berm that was installed now appears to only be a foot tall. Rector further stated the site would need to come into compliance with the approved site plan of the 3-foot berm. Gore also questioned if the board is permitted to place conditions on the variances such as time frames. Attorney Goldsmith stated the board has the statutory authority when granting a variance to accompany it with conditions as well as the authority to recommend to the Planning Commission when implementing the site plan that certain conditions be met. Wilson requested clarification as to if the previously approved 3-foot berm and plantings on the southwestern side is also what is being proposed along the remainder of the south and to continue along the eastern portion of the property up to the existing tree line. Mr. Jacobs referred to the site plan and stated the berm and landscaping would be consistent with the original variance for the southwestern line and would continue along the south and eastern portions of the property to the tree line. Wilson questioned should the variance be granted, could a time frame be placed stipulated on the Planning Commissions guidance, as to allow a reasonable amount of time to install the berm and plantings. Rector stated she is unsure how tall the existing berm is along the west side of the property, where the owner noted he will use what is existing and add plantings, and the 3-foot berm and plantings will be installed on the south side of the property and along to the east. Rector further clarified in regards to Planning Commission, should the variances be granted and site plan move forward, the landscaping can begin to be installed upon granting of the variances as the site plan is going to come into compliance with what is granted with the variances. Mr. Jacobs stated the existing berm on the south western portion of the property was 3-feet tall from grade when last measured, however it does need to be top dressed and new plantings added. Mr. Jacobs stated there will be some improvements made to that location and the remaining installed berm will all be uniform.

Attorney Goldsmith stated the first step would be the Board determining whether to grant the variances and then the Planning Commission reviews the site plan, as they determine site plan approval. Attorney Goldsmith then questioned if the Planning Department or Planning Commission needs to then confirm the type, number and height of plantings installed should the board allow the 3-foot berm with plantings to substitute the vinyl fence. Mr. Jacobs stated there are some differences in the actual use of the site which require an amendment to the special use approval which requires the Planning Commission. Mr. Jacobs continued explaining they are required to go before the Planning Commission for modification to the site plan however they needed to seek the appropriate variances first. Rector sought clarification on the variances being sought for the perimeter of the site with landscaping and that serving for fencing, as ordinance requires a row of evergreens 6 to 8 feet in height at planting and no more than 15 foot spacing and offset by 8 feet. Rector believed should the board grant the variances it would be with the understanding that even though the applicant is installing plantings, the plantings will not meet ordinance requirements as they are proposing much smaller plantings and shrubbery. Mr. Jacobs clarified evergreens are mixed in with the plantings. Rector further clarified the ordinance specifies what types of plantings and the spacing between them. Rector added once a decision is made, the plan would have to be amended and go before the Planning Commission. Rector stated should the Planning Commission make a determination on planting requirements; the applicant can move forward with amending the site to meet the approval. Attorney Goldsmith agreed. Mr. Nycz noted the proposed landscaping provides more dense plantings and closer together than what is required and the plantings proposed are drought tolerant as the property does not have water access. Angerer stated he believed it should be reviewed by the Planning Commission so the proposed plantings could be examined and determined more thoroughly. Rector suggested including that in the motion. Lake questioned the types of plantings being proposed. Rector stated the proposed plantings are to

serve are listed on the Landscape Schedule page. Discussion occurred on how to proceed with the motions and making 3 separate motions. Attorney Goldsmith stated multiple motions can be made and may be preferable to ensure appropriate conditions are made on each motion.

Motion by Wilson, supported by Gore, to approve the appeal of Andrew Nycz, Mulch King, 2124 Rood Street, Toledo, Ohio 43613, requesting a variance of the requirement of the perimeter of the entire site utilized for composting operations be screened and buffered by means of plantings, and a variance of the requirement of the perimeter of the entire site shall be fenced, per Section 400.1502.5.bb.cc, "Principal uses permitted subject to special approval for Commercial Composting Facilities", in an I-2, Light Industrial Zoning District, on land described as 5802-035-075-00, otherwise known as 110 W. Smith Road, Temperance, MI 48182 along approximately 850 feet of the west side of the property due to the existence of regulated wetlands and no berm, plantings and fencing can be installed without disturbing drainage as stated in letters from EGLE and NRM.

Discussion occurred as to how to proceed with the motions and stipulations as to appropriate time frames to complete the requests. Dersch stated in his opinion an appropriate time frame of 6 months to install the berm and one calendar year to install plantings to allow for installation when most appropriate for the plantings.

Roll call as follows:

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

Voting Nay: None.

Excused: None

Motion carried.

Wilson voiced support for the previously mentioned time frame.

Motion by Gore, supported by Wilson, to approve the appeal of Andrew Nycz, Mulch King, 2124 Rood Street, Toledo, Ohio 43613, requesting a variance of the requirement of the perimeter of the entire site utilized for composting operations be screened and buffered by means of plantings, per Section 400.1502.5.bb, "Principal uses permitted subject to special approval for Commercial Composting Facilities", in an I-2, Light Industrial Zoning District, on land described as 5802-035-075-00, otherwise known as 110 W. Smith Road, Temperance, MI 48182 to grant the submitted 3-foot berm to serve along the southwestern side continuing along the south side to the east side of the property up to the existing heavily wooded area on the eastern side conditioned upon the earthen berm to be installed within 6 months of the Planning Commission approval and following one calendar year to install the plantings subject to Planning Commission granting final approval of the location, number and types of plantings to be installed.

This motion includes an accepted friendly amendment.

Discussion occurred as to whether a separate motion was needed for the fence variance request.

Roll call as follows:

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

Voting Nay: None.

Excused: None

Motion carried.

Discussion occurred as to the need for a separate motion for fencing due to ordinance requirements. Dersch questioned the potential liability for the Township should the variance be granted and someone becomes injured due to unauthorized access on the property. Attorney Goldsmith stated the Township is cloaked with governmental immunity and were the fence to be required, it would not cover the property in its entirety. Attorney Goldsmith further stated the proposed berm and landscaping would act as a deterrent for motor vehicles gaining unauthorized access to the site.

Motion by Gore, supported by Dersch, to approve the appeal of Andrew Nycz, Mulch King, 2124 Rood Street, Toledo, Ohio 43613, requesting a variance of the requirement of the perimeter of the entire site shall be fenced, per Section 400.1502.5.cc, "Principal uses permitted subject to special approval for Commercial Composting Facilities", in an I-2, Light Industrial Zoning District, on land described as 5802-035-075-00, otherwise known as 110 W. Smith Road, Temperance, MI 48182 to grant the proposed 3 foot berm and mixed planting barrier, roadside ditch and depth of right of way to act as a natural barrier to prevent unauthorized access and dumping in place of the minimum 6-foot in height fencing requirement for the perimeter of the property conditioned upon any change to the existing wooded tree line or any additional wetland delineations that may affect the relationship between the approved berm and tree line that would need to be reviewed and approved prior to any changes being made.

The motion includes an accepted friendly amendment.

Roll call as follows:

Voting Aye: Gore, Dersch, Wilson and Lake

Voting Nay: Angerer

Excused: None

Motion carried.

Mr. Jacobs voiced gratitude to the Board for their efforts in reviewing the requests and allowing the applicant to move forward. Mr. Jacobs asked for clarification on the time line moving forward to install the berm and plantings. Ms. Rector stated upon Planning Commission approval, the applicant was granted 6 months to install the earthen berm and plantings must be installed within one year. Mr. Jacobs stated he intended to make every effort to have the amended site plan ready for review for either a July or August Planning Commission meeting.

PUBLIC COMMENT-

Tim Churchill – Mr. Nycz Legal Counsel- Mr. Churchill thanked the Board for their exercise of discretion and wanted to inform them that Mulch King remains committed to working out issues with the Township.

COMMISSION / STAFF COMMENT-

Rector advised the Board Members and the public the next Board of Zoning Appeals meeting is scheduled for Tuesday, July 13th, 2021 due to the holiday.

Attorney Goldsmith thanked the Board for their hard work and attention to detail.

Wilson apologized for the technical difficulties he experienced this evening.

Gore expressed gratitude to the Board and their ability to work through requests and stated he enjoys being on the Board.

Dersch also expressed gratitude to the Board and addressed some of the challenges working through the requests and appreciated that everyone works together as a team.

Lake stated the group is easy to work with and appreciated Mr. Gore's initiative in making motions.

ADJOURNMENT – The meeting was duly adjourned at 9:06 p.m.

Respectfully submitted,

Katrina Ingram
Recording Secretary