

BEDFORD TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING MINUTES
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN
JUNE 1, 2015

PRESENT:

JEFF BIGGS, PLANNING COMMISSION LIAISON
BRAD GREELEY, CITIZEN AT LARGE
BOB POTTER, CITIZEN AT LARGE
ARVID SHAH, ALTERNATE
GEORGE WELLING, ALTERNATE

EXCUSED:

RICK STEINER, TOWNSHIP BOARD LIAISON
KYLE PARSONS, CITIZEN AT LARGE

ALSO PRESENT:

PHIL GOLDSMITH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH
DENNIS KOLAR, BUILDING OFFICIAL
KAREN M. KINCAID, PLANNING AND ZONING
JODIE L. RECTOR, PLANNING AND ZONING, ASSISTANT, RECORDING SECRETARY

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

APPROVAL OF THE AGENDA

Motion by Biggs, supported by Potter, to approve the agenda. Motion carried.

APPROVAL OF THE MINUTES

Motion by Potter, supported by Biggs, to approve the minutes of May 4, 2015. Motion carried.

PUBLIC COMMENT (LIMIT 3 MINUTES)

None

NEW BUSINESS

A) OPEN THE PUBLIC HEARING 7:04 P.M. REGARDING THE APPEAL OF RICHARD KENNY, 2345 WEST DEAN ROAD, TEMPERANCE, MI 48182, REQUESTING A VARIANCE TO ALLOW A TEMPORARY OUTDOOR RECREATIONAL USE TO INCLUDE VOLLEYBALL, ICE RINK, BAG TOSS AND VARIOUS OTHER YARD GAMES PER SECTION 400.2200, "BOARD OF APPEALS", A DIMENSIONAL VARIANCE PER SECTION 400.1800 "SCHEDULE OF REGULATIONS", AND A NON-DECORATIVE FENCE HEIGHT VARIANCE OF TWO FEET WITHIN A FRONT YARD PER SECTION 400.1912 "FENCING" IN A C-2, SHOPPING CENTER BUSINESS ZONING DISTRICT, OTHERWISE KNOWN AS FOREST VIEW LANES, ON LAND DESCRIBED AS 5802-028-023-00, 2345 W. DEAN ROAD, TEMPERANCE, MI 48182.

Kincaid went over the analysis stating the site consists of approximately 9.22 +/- acres and is the current location of Forest View Lanes and Sandy Courts Volleyball. The Bowling alley was

established several years ago and a letter dated June 11, 2011 was issued to Management Control System, Inc., former owner, stating it was determined the bowling establishment received special approval from the Township prior to the time of construction, therefore rendering the bowling establishment in full compliance with the special approval uses in the C-2 zoning district. Kincaid stated on May 24, 1989, the owner at that time was granted special approval and final site plan approval for a miniature golf course that was located within the fenced area northwest of the bowling establishment, which now contains three volleyball courts. The outdoor miniature golf course use transitioned to an outdoor volleyball use, while the date of the transition has not been able to be verified by the Planning Department, the former owner said he believed the outdoor volleyball use was permitted when granted special approval for the outdoor miniature golf course use. Kincaid added it also cannot be determined when the additional six courts, two to the north and four to the west of the bowling lanes were established. The current owner and operator of Forest View Lanes and Sandy Courts, Richard Kenny, was in the process of expanding the two volleyball courts located north of the bowling lanes to four courts, when the Township determined the expansion would not be permitted without first seeking approval. A letter prepared by Brescol Law Office indicates the previous and current owners believe the volleyball use is a permitted use as the use was in existence at the time the letter of compliance was issued on June 11, 2001. Mr. Kenny has expressed he wants to work with Bedford Township to avoid any dispute. Kincaid included that during the winter of 2014, the applicant asked to be allowed to flood the three volleyball courts within the fenced area to the northwest of the lanes for ice skating and to open the concession area. After discussion within the Township Building and Planning Departments it was determined the use would not increase an already established area for outdoor use and would not create a parking concern. The rink was removed at the end of the season and the nets were reset for the volleyball use. Kincaid noted the applicant has listed the uses they would like considered as permitted temporary uses, as the uses are those that would be categorized as outdoor activities common at parks and/or campgrounds and in conjunction with a recreational facility. Kincaid said she had spoken with the Ordinance Enforcement Department and no complaints were received regarding the ice skating use and while early last year a complaint was received regarding loud music during evening volleyball, that issue was remedied and no further complaints have been received. Hours of operation have been outlined along with a breakdown on the months for each seasonal activity. Kincaid stated the Bedford Township Zoning Ordinance, Section 400.2204, states the Board of Zoning Appeals can grant a temporary use that shall not exceed 12 months for those uses otherwise not permitted in any district. Also, the action by the BZA for any temporary use shall first go before the Planning Commission for review and recommendation. On May 13, 2015 this request was heard by the Planning Commission where a recommendation was made to approve the outdoor recreational uses. Kincaid stated the setback in a C-2, Shopping Center Business District is 102' from the road right-of-way. The proposed setback for the volleyball courts is approximately 59' from the road right-of-way. It should be noted the car wash property to the east is C-3 zoned, which requires a 52' setback. The fenced area would be more in line with the C-3, General Business District setback of the property to the east. Therefore, a setback variance of 50' would allow the fence to be erected in the front yard of the subject property while meeting the front yard setback requirement for a C-3 zoning district. Kincaid also added as well the applicant is seeking a fence height and fence material variance of 2' to allow a 6' chain link fence to be installed in the front yard. The applicant has identified an area for additional parking along the east side of the building where paved parking will be required and the plan will require approval.

Kincaid added while this request is for a temporary use, lengthy discussions have taken place regarding the need to further review the zoning ordinance for possible amendments to include uses that have become popular. In conclusion the request is for 1) a temporary use variance to allow outdoor recreational uses, 2) a 50' front yard setback variance for volleyball courts, and 3) a 2' fence height variance and material variance to allow a 6' tall chain link fence in the front yard to enclose newly installed volleyball courts.

Rich Kenny-Owner/Operator Forest View Lanes and Sandy Courts

Tony Brescol-Brescol Law Office-Attorney for Mr. Kenny-Answer any questions. Mr. Brescol stated it is a use not otherwise a permitted use and they would like to see it granted as an amended ordinance overall, but request for a temporary use approval at this time.

Mr. Welling inquired on the front courts usage as stated for youth and family if liquor would be served in that area, Mr. Kenny stated it is for youths and family, soda and food would be served but no alcohol. The front courts dedicated for youth activity only. Further discussion ensued regarding the courts already being installed before the variance request. Mr. Goldsmith advised the applicant made an honest mistake, thought that based on the letter from a previous supervisor that they had a use that was permitted at that site. Mr. Goldsmith advised if going to modify a commercial use, the applicant must go to the Township and apply for site plan approval, further saying the BZA ordinance is well suited to allow the board to consider this proposed use on a temporary basis. Mr. Goldsmith read from the ordinance sub section 7: BZA may permit upon proper application the following character of temporary use not otherwise permitted in any district, which currently Bedford Township Zoning Ordinance does not allow for outdoor recreational activities other than permitting of parks in certain zoning districts. Mr. Goldsmith clarified a temporary use of 12 months with 12 month extension but the applicant would have to come back each year for approval, unless the ordinance is amended. Mr. Goldsmith stated that when a temporary use is granted, conditions can be added to the approval. Biggs stated he is the property owner to the east of the applicant's property and he sent a letter to Planning Commission stating he had no objections to the temporary use. Greeley said he did not have concern with the use request; he was concerned with the fencing request, as requesting a chain link fence in the front yard, asking if the applicant did any other research other than chain link fencing. Mr. Kenny stated the netting would be cheaper but didn't think it would look as nice year after year. He stated the chain link fence is high quality and thought it was aesthetically pleasing. Biggs advised there is an accessory building located in the front yard, asking if that should be included in the variance request. Kolar stated no permit is needed for the size of the accessory building but the ordinance does not allow accessory buildings in the front yard. Mr. Kenny noted the accessory building is for the youth courts. Mr. Goldsmith advised the board they should take that also into consideration to cover the entire site. There was further discussion regarding drainage. Kolar stated the drainage is subpar all the way down Dean Road, but does not feel the additional courts will create any additional drainage than what already exist. Mr. Goldsmith stated conditions can be added if it is determined a drainage issue exist due to the creation of those courts and that the applicant would be responsible to remediate that in a responsible way. Biggs added that he is very familiar with the property and would most likely create an issue with the swale within the applicants own property, as the property to the east is much higher and Biggs does not feel the additional front courts will create a problem in his detention area.

Karen Rideout- 8112 Douglas- Ms. Rideout said she lives in close proximity of Forest View Lanes and had concerns from previous years, especially over weekends, hearing squealing tires, fights, loud music and commotion continually until 2 o'clock in the morning. Mrs. Rideout stated she has seen improvement this year under the new ownership, but in previous years there had been continuous issues with loud music. Ms. Rideout added she is glad to hear it is a temporary use and would be required to be reviewed each year. Kincaid stated the Township did acknowledge the complaint of the loud music. The Ordinance Department did contact the owner and all the issues have been rectified as there have been no calls this season. Greeley inquired with Mrs. Rideout if she felt it was better this year, and yes she agreed.

Motion by Biggs, support by Welling, to close public hearing. Motion carried.

Kincaid requested on clarification on the uses, as Attorney Brescol had outlined them in his submitted letter regarding other such as bag toss, human size foosball table and billiard table and various other yard games commonly played at campgrounds and in parks. Mr. Kenny stated the bag toss would be behind the existing building and the back four courts; all requested yard game uses would be in that fenced in area. Welling inquired on volleyball hours of operation, maintaining the same as the bowling lanes, Mr. Kenny stated the leagues run till around 10:00 p.m. but the area is open the same hours as the bowling lanes. Mr. Kenny continued noting there is a buffer line of trees to the residential properties and he has adjusted the speakers inward and down to reduce sound. Mr. Kenny also has spoken with Mrs. Rideout that if she has any concerns to please inform him directly as he wants to remain respectful to the neighbors. Kincaid added the applicant has advised at the Planning Commission the back four courts south of the concessions are the first to shut down, Mr. Kenny also added those courts are on a separate lighting system and as soon as last play is done the lights are turned off and the music is off to those courts.

Motion by Potter, supported by Shah, to grant the appeal of Richard Kenny, 2345 West Dean Road, Temperance, MI 48182, requesting a variance to allow a temporary outdoor recreational use to include volleyball, ice rink, bag toss and various other yard games per section 400.2200, "Board Of Appeals" in a C-2 Shopping Center Business Zoning District, otherwise known as Forest View Lanes, on land described as parcel number 5802-028-020-00, 2345 W. Dean Road, Temperance, MI 48182 to remain in compliance with Bedford Township Ordinance of noise, lighting and other potential issues, comply with required Township number of required parking spaces. Owner is responsible for resolving any increased drainage issues due to the additional youth courts. Temporary use approval not to exceed 12 months with a 12 month extension with no further expansion without Board of Zoning Appeals approval. Conditions on hours of operation on outdoor activity to be between 5:00 p.m. - 10:00 and no longer than 10:30 p.m., with outdoor music volume turned down after 10:30 p.m. also, to allow the accessory building located in the front yard for the usage of the youth volleyball courts and then to be removed after youth volleyball season.

**Roll call as follows: Voting Aye: Potter, Shah, Welling, Greeley Nay: None
Motion carried.**

Motion by Biggs, supported by Potter, to grant the variance request of Richard Kenny, 2345 West Dean Road, Temperance, MI 48182, in a C-2 Shopping Center Business Zoning District, otherwise known as Forest View Lanes, on land described as 5802-028-020-00, 2345 W. Dean Road, Temperance, MI 48182 requesting a variance to allow a 50' front yard setback for youth volleyball courts with practical difficulty being similar with the C-3 zoned commercial building to the east and a 2' fence height variance and material to allow a 6' tall chain link fence in the front yard practical difficulty being to provide a safe enclosure to the newly installed youth volleyball courts as close proximity to Dean Road and for the safety of children, balls, and anything else from the youth courts from potentially going into the road.

**Roll call as follows: Voting Aye: Biggs, Potter, Welling, Shah, Greeley. Voting Nay: None
Motion carried.**

PUBLIC COMMENT

Karen Rideout- 8112 Douglas Road-Mrs. Rideout requested clarification on the hours of operation noted in the motion of 10:00 p.m. -10:30 p.m. closing time being 7 nights a week. Mr. Shah stated it was to be just for turning down the music, not hours of operation just when required to turn down the music.

Discussion took place regarding hours of outdoor play and hours of operation as some patrons stay around outside as the bowling alley is open till 2:00 a.m., Mr. Goldsmith added if there has to be an Ordinance Officer sent to the property, it is beneficial if they know the hours of operation if the issue is due to the outdoor activities. Mr. Goldsmith advised the board they have the authority to revisit the previous motion by reopening the public hearing as there seems to be some ambiguity on the hours of operation.

Motion by Welling, supported by Biggs, to reopen the public hearing for Richard Kenny, 2345 W. Dean Road to discuss clarification regarding hours of operation for outdoor temporary use. Motion Carried.

Mr. Brescol advised the Board for simplicity sake his client feels would be easier for the temporary use hours to coincide with the bowling establishment, that request would be 7 days a week 10:00 a.m. with last call being at 2:00 a.m. patrons leave the facility no later than 2:30 p.m. Mr. Brescol went on to say this time period has been going on and there have been no complaints. Biggs added that being property owner to the east he has not had any issues and reminded the board it will come back again for review next year. Greeley agreed with Biggs having no issues, further discussion regarding the music and lights turned down with the conclusion of league play. Kincaid added that notices regarding the public hearing were sent out to 300' of the perimeter of the property owners and occupants and no letters or calls of objection were received in addition to the concerns that have been expressed by Mrs. Rideout. Mr. Goldsmith advised the board they would need a motion to amend the previous motion. Mrs. Rideout said she is willing to communicate with Mr. Kenny if she has further issues.

The board discussed further regarding outdoor activities and the time frame regarding the noise as this is a temporary use and will be reviewed after a 12 month period and the board will have

the opportunity to again review. The Board continued to discuss the noise issue and hours of operation, and the area where the other various yard games would be played. Mr. Kenny stated he had done the due diligence regarding to rectify the noise volume to be respectful of the neighbors; it is now controlled and regulated.

Motion by Welling, support by Potter, to close public hearing. Motion carried.

Motion by Potter, supported by Welling, to amend the hours of operation of the previous motion to approve the temporary use of Richard Kenny to establish the outdoor activity hours of operation the same as the bowling lanes of 10:00 a.m. until 2:00 a.m. with the condition the music is turned down at the end of league play between 10:00 p.m. and 10:30 p.m. to only be heard on the patio area, and the Ordinance Enforcement Department will strictly enforce the noise ordinance.

**Roll call as follows: Voting Aye: Potter, Welling, Biggs, Shah, Greeley Voting Nay: None
Motion carried.**

PUBLIC COMMENT –None

COMMISSION / STAFF COMMENT – none

ADJOURNMENT –

The meeting was duly adjourned at 8:28 p.m.

Respectfully submitted,
Jodie L. Rector
Recording Secretary