

BEDFORD TOWNSHIP BOARD OF ZONING APPEALS  
REGULAR MEETING MINUTES  
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN  
October 3, 2016

**PRESENT:**

RICK STEINER, TOWNSHIP BOARD LIAISON  
BRAD GREELEY, CHAIRMAN, CITIZEN AT LARGE  
BOB POTTER, VICE-CHAIRMAN, CITIZEN AT LARGE  
GEORGE WELLING, CITIZEN AT LARGE  
TOM ZDYBEK, PLANNING COMMISSION LIAISON

**EXCUSED:**

NONE

**ALSO PRESENT:**

PHIL GOLDSMITH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH  
DENNIS KOLAR, BUILDING OFFICIAL  
KAREN M. KINCAID, PLANNING AND ZONING ADMINISTRATOR  
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 Welling, supported by Steiner, to approve the agenda. Motion carried.*

**APPROVAL OF THE MINUTES**

*Motion by Steiner, supported by Potter, to approve the minutes of September 13, 2016. Greeley abstained. Motion carried.*

**PUBLIC COMMENT (LIMIT 3 MINUTES)**

None

**NEW BUSINESS**

- A) **7:03 P.M. OPEN THE PUBLIC HEARING REGARDING THE APPEAL OF RICHARD KENNY (FOREST VIEW LANES, LLC), 2345 W. DEAN ROAD, TEMPERANCE, MI 48182, REQUESTING A VARIANCE TO ALLOW A REDUCED PARKING REQUIREMENT DUE TO SEASONAL ACTIVITIES WHERE FULL CAPACITY HOURS OF OPERATION DO NOT OVERLAP, PER SECTION 400.1904 "OFF-STREET PARKING REQUIREMENTS", 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 site of Forest View Lanes and Sandy Courts Volleyball. The bowling alley was established several years ago and a letter dated June 11, 2001 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. On May 24, 1989, a special approval and final site plan approval was granted by the Planning Commission 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, and while the date of the transition has not been able to be verified by the Planning Department, the applicant obtained Temporary Use Approval from the BZA for the existing uses on June 1, 2015 for the 2015 season and June 6, 2016 for the current season. Kincaid continued saying on August 30, 2016 the Township Board adopted the "Outdoor Recreation in C-2 and C-3" Zoning Ordinance to allow specific outdoor recreational uses with Special Approval when the requirements of the ordinance can be met. On September 7, 2016 the applicant, Richard Kenny, sought and was granted Special Approval from the Planning Commission for the outdoor recreational uses as identified in the Brescol Law Offices letter of August 30, 2016. Kincaid said Richard Kenny, current owner and operator of Forest View Lanes and Sandy Courts Volleyball, expanded the volleyball use to a total of 11 courts, as

was approved with the BZA temporary use in 2015. Along with the increased number of volleyball courts, the BZA also granted a 50' setback variance for the fence in Zone 7 and a 2' fence height variance to allow a 6' tall fence in a front yard in a C-2 zoning district. Kincaid added it should be noted in the submitted Exhibit by the applicant, the fence line it is misaligned in that the existing fence line in Zone 7 meets the setback requirement of the C-3 zoning district, which is that of the Kicking Mule Car Wash to the east. The existing fence in Zone 7 complies with the variance that was granted by the BZA on June 1, 2015. The setback requirement in a C-2 zoning district, which is the zoning of the subject site, requires 102' from the road right-of-way, and the applicant is seeking a setback variance of 50' from the road right-of-way in Zone 6 to place a six foot tall fence to align with the existing fence of Zone 7. Kincaid advised as well a two foot height variance is being requested to allow a six foot tall fence in Zone 6 to match the fence height in Zone 7. Kincaid said the applicant is also seeking a parking space variance, which can only be varied by the BZA. 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 in Mr. Brescol's letter of August 30, 2016:

**Inside Facility: 116 spaces required by Ordinance**

- 100 spaces required for the blowing lanes (5 spaces per lane x 20 lanes)
- 10 spaces required for the bar/eating area (1 space for each 75 square feet of usable floor space based on 720 square feet)
- 6 spaces required for the golf simulator and seating areas (1 space for each 200 square feet of usable floor area based on 1120 square feet.)

**Outdoor Recreational Activates: 158 spaces required by Ordinance**

- 132 spaces required for 11 volleyball courts (1space for each 150 square feet of an 1800 square foot court = 12 spaces per court)
- \*4 spaces required for yard game area (1 space for each 150 square feet of 420 square foot usable floor space =4 spaces). (\*As noted by the Planning Department, this area consists of 5000 square feet where 420 square feet is being utilized at this time. While parking requirements have been calculated on 420 usable square feet as stipulated by ordinance, an actual use could require additional spaces, and any increase in activity area would require additional parking spaces.)
- 22 spaces based on outdoor bar and patio area (1space for each 75 square feet of 1632 square foot usable floor space=22 spaces)
- \*\*? Spaces required for future outdoor uses (Zone 6) where currently no use is being proposed. (\*\* As noted by the Planning Department, this area consists of 14,400 square feet and no specified use is being proposed at this time. Once a use is determined, parking spaces will be required for this area.)

Kincaid said with the information that has been provided, parking spaces required for the site are calculated at 274, further saying it should be taken into consideration that it has been rare when both indoor and outdoor activities are taking place at full capacity at the same time. 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." Kincaid said it should also be noted that commercial parking lots are required to be of asphaltic or concrete surfacing per Section 400.1905 and the gravel parking area to the east of the main structure is gravel and is being used in parking space calculation, and a variance has not been sought on the parking surface requirement. Photos were included in the packet of various area of the site for review. Kincaid advised the Board employee parking has not been included in the calculations and should be addressed by the applicant.

**Tony Brescol-Attorney for Mr. Kenny- Richard Kenny-Applicant-** Mr. Brescol said the approval granted from the Planning Commission requires by ordinance that a variance be sought from the BZA if the parking, setbacks and fence height requirements do not comply with the requirements of the ordinance. Mr. Brescol advised the Board there are currently two separate operations at the location, one being indoor usage primarily during winter months and outdoor uses primarily during the summer months. Mr. Brescol said the newly adopted ordinance requires parking to be calculated on the usable area, referring to the calculations provided by Kincaid, saying he and applicant agree with the calculations when complying with the ordinance requirements. Mr. Brescol added the calculation of 24 additional parking spaces for Zone 6 is based on volleyball, which is the most intense outdoor use located at the site, as currently no uses proposed would require 298 parking spaces. Mr. Brescol continued to explain the requested variance of half the required parking spaces from the 298 to 149 and reasons being per Section 400.1904.7, Off-Street Parking Requirements permitting to seek a variance due to operation hours. Mr. Brescol

advised this particular site is not due to operating hours but due to operation of activities in different seasons. Mr. Brescol stated the bowling alley nor the outdoor volleyball has ever had a parking issue, further saying there are patrons parking in the grassy area during the volleyball season, but that is not due to the lack of paved parking spaces. Mr. Brescol added there is only approximately 1-2 weeks of overflow parking when the two seasons overlap and there may be absolutely no available parking spaces, as Mr. Kenny once indicated that patrons tend to want to park in close proximity to the area they are utilizing. Mr. Brescol stated in their opinion the current parking area has served the purpose as it exists and if the Board grants this variance from the required 298 parking spaces, the existing parking will be sufficient and meet the needs of the location. Mr. Brescol stated the applicant understands if there is ever any expansion or a proposed new use they would be held to comply with the ordinance requirements. Mr. Brescol reiterated that the existing number of parking spaces meets the needs of the indoor and outdoor activities perfectly and the hardship is due to the meeting the now requirements of the outdoor recreational ordinance. Mr. Brescol summarized the variance submitted is for the Board to grant half the required parking spaces from the required 298 parking spaces applying the most intense use of volleyball in Zone 6 as essentially both the indoor and outdoor uses are used about ½ of the time.

Greeley asked for clarification on the actual number of paved parking spaces and Mr. Kenny advised there are 156 paved parking spaces not including the gravel area. Mr. Brescol agreed that none of the parking area previously discussed included the gravel area. Steiner said any future use or expansion would require an updated plot plan submitted, reviewed and approved by the Planning Commission. Discussion continued on the proposed use of Zone 6 and the required amount of parking spaces with the most intense use of volleyball per the ordinance of useable area. Greeley noted the increased amount of parking spaces required for the outdoor volleyball/yard game use compared to the number required for the indoor bowling alley/golf simulator/bar area. Mr. Brescol reiterated the applicant's opinion is the area of parking closest to the volleyball courts is where the majority of the patrons are parking and not utilizing the parking area easterly of the bowling alley roof line, resulting in the parking lot appearing to be full and congested and not due to no actual parking spaces being available. Mr. Brescol advised those findings are due to the past several years of observation at this new capacity of activity and not exceeding the actual parking spaces needed.

Mr. Goldsmith addressed the Board and referenced Mr. Brescol's statement on where patrons choose to park instead of utilizing designated parking spaces, which results in congestion on the site, further saying the board can grant a variance in full or in part and can add reasonable conditions. Mr. Goldsmith asked the applicant if there were any plans to require the patrons to utilize the designated parking areas to avoid a public health, safety and welfare concern. Mr. Brescol referred to the approval granted by the Planning Commission regarding an installation of a fence around Zone 6, which would eliminate the grassy area in Zone 6 where some parking is currently taking place. Further comments were made regarding directing the flow of traffic by Zones 4 & 5 with one way directional arrows, and Mr. Kenny added the north row is marked two way directional and the south parking row is one way, which was completed with the resealing. Greeley inquired if there were any no parking signs located near the ingress/egress, and Mr. Kenny stated previously there were signs and he has tried to address the parking on the grass, but with no resolution. Lengthy discussion took place regarding the time frame of bowling leagues and volleyball leagues with regard to hours of operation, number of teams, days of the week and when, if any, overlap would occur. Greeley addressed Mr. Kenny asking if he is comfortable with number of paved parking spaces for the existing facility and outdoor uses, and both Mr. Brescol and Mr. Kenny stated yes.

Welling spoke of the number of spaces and if Mr. Kenny has any knowledge when the last time the parking area was expanded, and Mr. Kenny answered approximately 10 years ago. Potter referred to the number of potential spaces within the gravel area. Kincaid said 14 spaces have been striped on the interior of the gravel area, further saying there is potential for additional spaces along the outer perimeter within the existing graveled square footage. Steiner added after visiting the site there could be approximately 25-30 more additional spaces within the gravel area. Welling asked if the spaces within the gravel area could be considered as parking spaces. Mr. Goldsmith said the spaces could not, nor has the applicant requested the spaces be allowed. Zdybek said based on the request of half the required number of parking spaces, would the request be considered an extreme request, noting previous developments where the parking space requirement was well over what would ever be needed (Kroger). Mr. Goldsmith stated pursuant to the ordinance the BZA has the authority to grant a variance on parking requirements, further saying it may appear to be extreme, however the request may not be out of the realm due to seasonal uses that take place at different times of the year. Mr. Goldsmith continued saying it then becomes the matter of providing sufficient spaces for the patrons that use the facility, and providing a safe ingress/egress with safe parking, and access for emergency vehicles if necessary.

Mr. Goldsmith advised the board that when making a decision, they should keep in mind the applicant has had two successful years of temporary approval granted by this board, and based on the representation from Mr. Brescol, the applicant's practice and experience would indicate there is sufficient amount of paved parking available. Kincaid added if the consideration is to take ½ the number of required parking, there is one use that requires a considerable greater number of parking spaces than other uses. Kincaid said currently the outdoor uses require 158 spaces, which does not include employee parking or Zone 6, as Zone 6 has not yet been developed. Kincaid noted if Zone 6 were to be developed as volleyball courts the use would require an additional 24 parking spaces for the outdoor use, increasing the required parking to 182 spaces where the applicant has stated there are currently 153 parking spaces. Kincaid again noted the parking calculations do not include any employee parking.

Zdybek said the primary facility is the bowling alley and is the lesser of the two uses for required number of parking spaces. Mr. Brescol stated the outdoor activity does have a higher parking requirement due to the usable square footage for calculation; however, not all teams are made up of 12 players per court. Mr. Kenny also has volleyball teams of two and four players where the parking is being calculated for all 11 courts with the usable square footage requiring 24 spaces for each court, making it difficult to meet the requirement. Mr. Brescol said but with years of practice even before the temporary use approvals, the available parking has worked. Mr. Brescol said before now, the facility was within the parking regulations and nothing has changed at the location. Mr. Kenny is now requesting, with the adoption of the new ordinance, a permanent special use approval with the same uses previously approved with the temporary use. Steiner requested the applicant to possibly look at adding language to the sign-up sheet for volleyball to include terms for utilizing designated parking area. Mr. Brescol added Mr. Kenny has stated he has every motivation to maintain enough parking to avoid the facility appearing to be congested with no available parking, which would deter patrons. Mr. Kenny advised the intent of the additional proposed fencing in Zone 6 will help prevent the parking in the grassy area and require patrons to utilize the parking area. Potter asked for clarification on the decision by the Board being permanent. Mr. Goldsmith stated the request is for a permanent use. Mr. Brescol advised the board the variance request is for the proposed uses and Mr. Kenny is aware any additional uses or expansion to the location would require a submitted site plan to the Planning Commission.

Mr. Brescol stated the other part of the request is for the fencing height and dimensional setback. Mr. Kenny is seeking in Zone 6 & 7 a 2' fence height variance from the front yard requirement of 4' height in a commercial zoning district as the ordinance requires a 6' height on a fence, where with the previous temporary use variance the request was already granted for Zone 7. Mr. Brescol explained although the height variance was previously granted, it was done so through a temporary use and this request would be for a permanent variance to allow a 6' tall fence in a front yard. Mr. Brescol also included the request for a 50' front yard setback variance which was previously granted with the temporary use on Zone 7, which would now not only include Zone 7, but would also include Zone 6. Kincaid added on September 7, 2016 the Planning Commission recommended to the BZA to grant the 50' setback variance and the 2' fence height variance on both Zone 6 and Zone 7 as a permanent variance. Mr. Goldsmith stated there does need to be a practical difficulty on the fence height and the Board could find that health, safety and welfare of the public to provide security to keep the volleyballs from entering into the roadway. Steiner requested cleaning up the ordinances to avoid applicants having to continue to come back before the board for variance requests.

***Motion by Steiner, supported by Zdybek, to close public hearing at 7:53 p.m. Motion carried.***

***Motion by Potter, supported by Welling, to grant for one year the request of Richard Kenny, Forest View Lanes, 2345 W. Dean Road, Temperance, MI 48182, requesting a variance to allow a reduced parking requirement of 149 parking spaces, ½ the ordinance requirement, due to seasonal activities where full capacity hours of operation do not overlap on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road with the condition after one year of observation of available parking, the applicant shall resubmit, and the Board of Zoning Appeals shall have the right to require by ordinance the number of parking spaces if the Board finds insufficient amount of parking spaces is causing a health, safety and welfare concern to the township.***

Steiner commented on the location and the number of years the use has been in operation with a temporary approval. Steiner stated he felt this request should be cleared up all at one time, tonight not requiring the applicant to come back with additional financial cost. Welling felt the Board and Township has worked with the applicant and felt the motion on the table was not requiring too much of the applicant and the Board could waive the fee. Steiner said he struggled with another temporary approval as the applicant is in compliance with the temporary approval already

granted, and the applicant is complying with the newly adopted ordinance of the Township. Steiner said he would be inclined to vote no which would require the applicant to come back again showing a true change in the situation and lose the entire variance request. Steiner respectfully disagreed with the motion. Greeley said he agreed with Steiner. Greeley added, if the applicant does not supply enough parking for his patrons, it will not adversely affect Bedford Township, it will only end up hurting his business. Per Welling's request, Rector read aloud the motion on the table. Zdybek asked the applicant if at a previous meeting he stated he had a difficult time obtaining financing from a lending institution with a temporary approval use. Mr. Brescol stated yes that is correct as it is the unstable nature of a temporary approval use. Steiner requested clarification on the number of parcels that could be included with this new ordinance and Kincaid said 13 could possibly fit within the ordinance. Further discussion took place regarding the motion on the table and referring to the previous discussion with the amount of existing parking spaces already supplied. Mr. Kenny stated anything the location has needed he has supplied, adding if there becomes a need for more parking to keep the business prospering, more parking will be installed. Potter and Welling agreed to retract the motion on the table.

*Motion by Potter, supported by Welling to withdraw the motion to grant for one year the request of Richard Kenny, Forest View Lanes, 2345 W. Dean Road, Temperance, MI 48182, requesting a variance to allow a reduced parking requirement due to seasonal activities where full capacity hours of operation do not overlap on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road with the condition after one year of observation, the applicant resubmit, and the Board of Zoning Appeals having the right to require by ordinance the number of parking spaces if the Board finds insufficient amount of parking causing a health, safety and welfare concern to the township.*

*Motion by Steiner, supported by Zdybek, to grant the request of Richard Kenny, Forest View Lanes, on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road, Temperance, MI 48182, to allow a reduced parking requirement from 298 required parking spaces to 153 parking spaces due to new ordinance parking requirements where the applicant was in compliance with the temporary approval, seasonal activities were at full capacity, hours of operation do not overlap and per Section 400.1904.7 the BZA is permitted to allow the requested parking variance.*

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

*Motion by Welling, supported by Steiner, to grant the request of Richard Kenny, Forest View Lanes, on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road, Temperance, MI 48182, to allow a 50' front yard setback and a 2' fence height variance on Zones 6 & 7, with a practical difficulty to maintain health, safety and welfare of the roadway, maintains continuity to the property and as recommended by the Bedford Township Planning Commission from a temporary approval to a permanent.*

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

**PUBLIC COMMENT –None**

**COMMISSION / STAFF COMMENT –**  
*Zdybek commented on the fence height and suppling additional area for courts in zone 6.*

**ADJOURNMENT –**  
*The meeting was duly adjourned at 8:20 p.m.*

*Respectfully submitted,  
Jodie L. Rector  
Recording Secretary*