

MINUTES-REGULAR MEETING
BEDFORD TOWNSHIP PLANNING COMMISSION
8100 JACKMAN ROAD, TEMPERANCE, MICHIGAN
October 12, 2016

PRESENT:

MARYANNE BOURQUE, CHAIR
KORLEEN BIALECKI, VICE-CHAIR
PAUL PIRRONE
JAKE LAKE, SECRETARY (arrived at 7:14 p.m.)
TOM ZDYBEK

EXCUSED:

MATT ANGERER
ROBYNE BUSH

ALSO PRESENT:

MARTY KAMPRATH, LEGAL COUNSEL, LENNARD, GRAHAM & GOLDSMITH
KAREN M. KINCAID, PLANNING AND ZONING ADMINISTRATOR
JODIE L. RECTOR, PLANNING AND ZONING ASSISTANT

Bourque called the Bedford Township Planning Commission meeting to order at 7:07 p.m. The Pledge of Allegiance was said. Kincaid called the roll. Quorum present.

APPROVAL OF THE AGENDA

Motion by Bialecki, supported by Zdybek, to approve the agenda. Motion carried.

APPROVAL OF THE MINUTES

Motion by Pirrone, supported by Zdybek, to approve the minutes of September 21, 2016. Motion Carried.

PUBLIC COMMENT (LIMIT 3 MINUTES)-None

NEW BUSINESS

A) REQUEST FOR FINAL SITE PLAN APPROVAL FOR VILLAS AT SUMMERLYN LAKES PHASE III ON PARCEL NUMBER 5802-031-090-12, LOCATED ON SMITH ROAD WEST OF SECOR ROAD, LAMBERTVILLE, MI

Kincaid reviewed the analysis stating the subject site is within the Summerlyn PUD, which is located on the northwest corner of Secor and Smith roads. The PUD site plan was originally approved on 5/15/07, with a PUD amendment to separate the then planned 4-unit buildings on 9/12/12. Also on 12/2/15 an approval was granted to amend the PUD to include an additional 17 acre parcel for future development. On 8/13/14, Phase I of the Villas at Summerlyn Lakes was approved which included 20 units. Phase II was approved on 12/2/15, which consists of 13 units and Phase III consists of an additional 36 units. The Master Deed for Phase III has been submitted by the applicant and reviewed and approved by Lennard, Graham and Goldsmith. Kincaid said the approvals have been received from MCDC 8/18/16, the Mannik & Smith Group 5/24/16, and the Bedford Township Fire Department 6/17/16 with an agreement letter dated 11/19/15 from the applicant to maintain the current construction entrance as a second entrance to

the project until such time as Phase IV of the project is developed with a permanent second entrance and in the event Phase IV is not developed, the current construction entrance will be converted to a permanent second entrance to the project per the Bedford Township Fire Chief. The developers do not plan to install a walking path or sidewalks within the project. Street lights are required and a Special Assessment District has been established and was approved by the Township Board on 9/6/16. Municipal water and sewer is available and the storm water system and roads are private. Kincaid noted in summary Final Site Plan Approval for Phase III of the Villas at Summerlyn Lakes Phase III should be conditioned on addressing all issues and concerns as stated in MCDC, MSG and Bedford Township Fire Department review letters. Bourque referred to the MSG letter stating there were no concerns to hold up granting the approval.

Scott Bollin- 6622 Summerlyn Blvd-Applicant- Mr. Bollin was available to answer any questions.

Bourque advised the applicant it would require a majority vote for approval, offering the option to move forward or reschedule with full commission. The applicant waived the right to defer and requested to move forward.

Motion by Pirrone, supported by Zdybek, to approve the request for Final Site Plan Approval for Villas at Summerlyn Lakes Phase III, on parcel number 5802-031-090-12, located on Smith Road west of Secor Road, Lambertville, MI conditioned on addressing all issues and concerns as stated in MCDC, MSG and the Bedford Township Fire Department review letters.

Roll call as follows: voting Aye: Pirrone, Zdybek, Bialecki and Bourque. Voting Nay: None. Excused: Bush, Angerer, Lake. Motion carried.

B) OPEN THE PUBLIC HEARING REGARDING FOREST VIEW LANES REQUEST FOR AN AMENDMENT TO AN EXISTING SPECIAL APPROVAL FOR AN OUTDOOR RECREATIONAL USE IN A C-2, SHOPPING CENTER BUSINESS DISTRICT TO AMEND THE HOURS OF OPERATION ON THREE EXISTING VOLLEYBALL COURTS IN ACCORDANCE WITH THE SUBMITTED PLOT PLAN, ON PARCEL NUMBER 5802-028-023-00, OTHERWISE KNOWN AS 2345 DEAN ROAD, TEMPERANCE, MI 48182

Motion by Zdybek, supported by Lake, to open the public hearing at 7:15 p.m. Motion carried.

Kincaid said 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., the 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 approval from the Board of Zoning Appeals

on June 1, 2015 for the 2015 season and on June 6, 2016 for the current season. On August 30, 2016, the Outdoor Recreational Use Ordinance went into effect, and on September 7, 2016, a request for Special Approval to allow the outdoor recreational uses on a permanent basis went before the Planning Commission, and special approval was granted. The Planning Commission stipulated in the motion to grant Special Approval that the applicant must seek a setback variance and fence height variance for Zones 6 & 7 through the BZA. As well, it was stated that the Planning Commission could not grant any deviation in the number of parking spaces required by ordinance, and that consideration for a deviation from the required number would have to be granted by the Board of Zoning Appeals. Kincaid said on October 3, 2016, a request for variance on the required number of parking spaces, a fence height variance, and a setback variance was heard by the BZA. The applicant was granted the fence height variance and fence setback variance as presented. Kincaid said as well the applicant was granted a variance on the required number of parking spaces to allow the applicant to maintain the number of existing 153 spaces with no increase in spaces required. Kincaid reiterated that Mr. Kenny is the current owner and operator of Forest View Lanes and Sandy Courts Volleyball, and as acknowledged in his submitted application dated September 22, 2016, the Planning Commission approved hours of operation for the volleyball use in Zone 5 from 10:00 a.m. to 12:00 a.m. The applicant is seeking an amendment to the Special Approval to reconsider the hours of operation in Zone 5 from 10:00 a.m. to 12:00 a.m. be change to 10:00 a.m. to 2:00 a.m.

Richard Kenny-7824 Jackman Road-Owner of Forest View Lanes-Tony Brescol-Attorney for the applicant-

Ms. Bourque asked for clarification as Mr. Kenny had advised his key business hours are five days a week from 6:00 p.m. until 2:00 a.m. Mr. Kenny said his key business hours are Sunday through Thursday from 6:00 p.m. until 2:00 a.m., adding Friday and Saturday are the slowest days for sales. Pirrone asked Mr. Kenny if the request was for five days or the full seven days. Mr. Kenny stated the facility is open seven days a week until 2:30 a.m., and the previous approved hours for the other zones are fine and were implemented the night of approval; however, the three courts within zone 5 are the most utilized courts and critical to his business without building courts in zone 6 and installing lights on Zone 7. Pirrone said he was confused on the previous decision to approve hours of operation in Zone 6 and 7 until 2:00 a.m. but restrict Zone 5 to shut down at midnight when Zone 5 is located right next to the existing outdoor bar area. Mr. Kenny advised the Commission that shutting down those three courts in Zone 5 at midnight is basically shutting down his business at midnight.

Mr. Brescol said league play starts around 6:00 p.m. where not a ton of sales is taking place at that time, further saying as soon as league play concludes and Mr. Kenny closes the courts down at midnight, by eliminating the hours of operation from midnight until 2:00 a.m. of open play, patrons are leaving and sales have decreased. Mr. Kenny added the decrease is around 25%. Bourque inquired on the seasonal time frame for volleyball, and Mr. Kenny said the league play and primary hours start in April and continue through the month of September, which is approximately 20 weeks. Pirrone asked Mr. Kenny if he would be opposed to a decision based on the months of April through September remaining open until 2:00 a.m. from Sunday thru Thursday. Mr. Kenny said no, but Zone 5 is where the ice rink is located and without having a heavy winter, as the past two winters, one being too warm and other very cold, Mr. Kenny said he has nothing to compare the revenue to if patrons would stay and skate after midnight. Lake

asked what time league play concludes, and Mr. Kenny stated 10:00 p.m. Mr. Kenny confirmed after 10:00 it is open play. Mr. Brescol stated continuity is what Mr. Kenny is seeking and the proximity to the residential area currently discussed is approximately 500'-550' from Zone 5, which includes a buffer tree line and Zone 5 is adjacent to Zones 6, which has an approved time frame to 2:00 a.m. Mr. Brescol stated a 52' setback from the roadway was granted from the BZA for the fencing in Zone 6 and 7, which is from the new residential to the north. Mr. Brescol continued saying Zone 5 is a known quantity, knowing exactly what is there, the three courts have been there in existence and operating for a number of years. Mr. Brescol added from a safety standpoint, Zone 5 is directly adjacent to the free standing bar area to avoid having patrons cross the parking area. Lake said the busiest time is being determined by the applicant from 6:00 p.m. until 2:00 a.m., asking if the determination is based on sales or foot traffic. Mr. Kenny stated the determination is based on league play on all courts from 6:00 p.m. until 10:00 p.m., and when looking at sales of food and beverage from 6:00 p.m. until 2:00 a.m., the food and beverage sales are heaviest on those five days where Friday and Saturday are the weakest days of sales.

Karen Rideout-8112 Douglas Road-Ms. Rideout voiced opposition to the requested change. Mr. Rideout said she felt the Commission had worked hard making the decision from the previous meeting, addressing the considerations of the residents and the business owner. Ms. Rideout stated from a business standpoint she understands Mr. Kenny may be losing revenue, but as a resident from the surrounding residential area, Ms. Rideout said she does not see a need for any courts to remain open until 2:00 a.m.

Ryan Luksaik-8042 Douglas Road-Mr. Lukasik stated opposition to the proposed 2:00 a.m. amendment. Mr. Lukasik said he felt the courts should close Monday through Friday at 10:00 p.m. and Friday and Saturday at midnight. Mr. Lukasik said he trusted that the Commission would take a stand and support the decision already granted. Mr. Lukasik stated he personally does not know of any location in any area that allows for outdoor activity until 2:00 a.m. Mr. Lukasik also referred to a comment at the previous Planning Commission meeting regarding noise such as a neighbor having an outdoor party, and Mr. Lukasik stated he understood that statement but could not see that being tolerated if a neighbor was having an outdoor party every night of the week until 2:00 a.m., which is what is being requested from the applicant.

Kenneth Henry- 2268 W. Dean Road-Mr. Henry stated opposition to the proposed amendment to extend the hours until 2:00 a.m.

Motion by Pirrone, supported by Zdybek to close the public hearing at 7:35 p.m. Motion carried.

Bourque advised the applicant it would require a majority vote for approval, offering the option to move forward or reschedule with full commission. The applicant waived the right to defer and requested to move forward.

Bialecki requested clarification from Mr. Kamprath on the procedure and if it is proper to consider amending a Special Approval with the time frame being less than 60 days since the new Outdoor Recreational Ordinance went into effect and the original Special Approval was granted

for Forest View Lanes. Mr. Kamprath advised there is nothing within the Special Approval section of the ordinance that specifically addresses amending a Special Approval and that is why Mr. Kenny is going through the entire process with a public hearing, just as the applicant did for the original approval. Mr. Kamprath stated within the ordinance it does not state any criteria, such as a change of circumstances. Mr. Kamprath advised the applicant's next remedy would be appealing to circuit court.

Pirrone referred to the submitted Exhibit showing Zone 5 in proximity to Zones 6 & 7, saying Zones 6 & 7 currently have an approval to operate until 2:00 a.m., and the area designated as Zone 4, which is the bar area, is open until 2:30 a.m. Pirrone voiced his opinion that with the hours granted for Zones 6 & 7 and the bar area, there would be continuity for the area between those locations to also have the same hours of operation. Bourque asked Mr. Kenny if Zone 7 is being leased by Toledo Beach Volleyball at this time, and Mr. Kenny stated yes Zone 7 has no lighting and is used for youth club sports, and Zone 6 is a grassy area where there is currently no activity in that area. Mr. Kenny continued saying currently there are no plans to develop the Zone 6 area and that is why he is seeking the request to amend the hours of operation in Zone 5 to use the existing courts until 2:00 a.m. Mr. Kenny said otherwise he will plan to install lights in Zone 7 and develop Zone 6, which would be closer to the residential area across Dean Road. Mr. Kenny advised the area of Zone 5 is approximately the same distance from the residential properties to the South as would be the residential to the North. Mr. Kenny added without this amendment granted he will have to develop Zone 6. Pirrone stated hours of operation in Zone 6 & 7 are until 2:00 a.m., regardless of the decision made this evening on Zone 5.

Zdybek said he is torn between the commercial business and the residential concerns. Zdybek agreed that businesses make the majority of their profit from food and beverage sales but at the same time his responsibility with the other Commission Members is to consider all citizens concerns within the community when making a decision. Mr. Kenny stated his revenue comes from food, beverage and activity. Mr. Kenny stated he felt this request is a happy medium as Zone 5 is located between Zone 6 to the north which has already been granted a 2:00 a.m. shut down time, and he is satisfied with closing the rear 50' of Zone 2 at 10:00 p.m. and the remainder of Zone 2 and all of Zone 3 at midnight to accommodate the residential area to the south. Mr. Kenny added the distance from Dean Road to Zone 5 is also a good distance to accommodate the residential property to the north.

Lake stated this is not just about Forest View Lanes, saying this is about the Township and the precedent the Commission could be setting. Lake referred to the previous Planning Commission meeting and making two motions with separate time frames, saying this is about one site and the ordinance, and how the ordinance is written. Lake said the Commission all voted and agreed with the language of the newly adopted ordinance as stated with default hours of midnight, saying he agreed with the way it is written, which is favorable to the Township and more favorable to the businesses within the Township, compared to other townships within the area. Bourque voiced concern on the amount of days open until 2:00 a.m. Pirrone reiterated the time frame of April through September, Sunday through Thursday until 2:00 a.m., and conditioning that time. Bourque stated concern with the length of time of 6 months and five days until 2:00 a.m., and suggested a less number of days allowed.

Mr. Kenny said around 10:00 p.m. league play has concluded and no whistles are being used. Bialecki said she was not in attendance at the meeting on September 7, 2016 and has been listening tonight at the lengthy discussion taking place on everyone's positions and concerns. Bialecki referred to Mr. Brescol's comment on consistency throughout the seasons and the different zones closing down at different times. Bialecki said if the decision is to allow Zone 5 to remain open until 2:00 a.m. she would tend to agree on permitting the time year round rather than limiting it to the busy season. Bialecki explained the reason being difficulty in enforcing such time frame. Bialecki agreed with Pirrone on the two zones that are closer to residential area off Dean Road already be permitted to operate until 2:00 a.m. and currently not being utilized until that time. Bialecki stated now the applicant is requesting for Zone 5, which was operating until 2:00 a.m. and having a buffer between the properties to the south and to the north. Bialecki said she felt from the previous Planning Commission approval, if any of the zones were going to be permitted to operate until 2:00 a.m., it should have been Zone 5, where she thought Zones 6 & 7 should have been only until 10:00 p.m.

Zdybek addressed concern in regards to the residential properties north of the site. Kincaid noted that a public hearing requires notices to be sent to all properties within 300' of the perimeter of the subject property, and those parcels owners and occupants were included in the mailings.

Pirrone said issues with noise once league play resumes may continue, as Zones 6 & 7 are open until 2:00 a.m., and Zone 5 flows into Zone 6. Zdybek agreed with Pirrone, referring to the submitted Exhibit showing Zone 5 adjacent to Zone 6, adding it makes sense for Zone 5 to be included in the 2:00 a.m. time frame as it is most adjacent to the bar area. Zdybek felt Zone 5 was not addressed properly at the previous meeting. Pirrone agreed. Lake gave a recap of the minutes on the motion he made at the previous meeting, stating he believed Pirrone and Angerer voted nay due to the hours of operation for Zone 5. Lake added he included Zone 5 in the motion to end hours of operation at midnight to stay consistent with the ordinance, advising the motion made for Zones 6 & 7 at the previous meeting he voted nay, as it was not consistent with the ordinance. Lake stated areas and operation time frame will be debated on every outdoor recreational activity. Lake expressed the need to be consistent when moving forward.

Bourque inquired with legal on rescinding the approval for Zones 6 & 7. Mr. Kamprath said any motion for the request can include conditions. Mr. Kamprath said the applicant would have to accept the conditions to the motion. Pirrone asked the applicant if he would accept the rescinding of hours of operation on Zone 6 & 7 from 2:00a.m. to midnight and allow Zone 5 to be open until 2:00 a.m. Mr. Brescol asked Mr. Kamprath from a procedural standpoint would Mr. Kenny be required to resubmit to amend Zones 6 & 7 as those two zones are not before the Commission. Bourque added per counsel it would be a condition if Mr. Kenny agreed to the condition of the motion. Mr. Kamprath stated he would be comfortable that the motion with those conditions would be satisfactory. Lake voiced opinion to not consider adding those conditions with a motion as the submitted request does not include Zones 6 & 7. Bourque asked for clarification on the distance Zone 5 is from the residential properties on Douglas Road. Mr. Kenny stated approximately 500-600 feet. Mr. Brescol also noted the property directly adjacent to Zone 5 to the west is commercially zoned.

Motion by Pirrone, to grant the request for an amendment to an existing special approval for Forest View Lanes to amend the hours of operation on three existing volleyball courts in accordance with the submitted plot plan, on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road, Temperance, MI 48182 to amend hours of operation on Zone 5 until 2:00 a.m. for the months of April through September, Sunday through Thursday to be consistent with Zone 6 and Zone 7, and Friday and Saturday until midnight as previously approved.

MOTION FAILED DUE TO LACK OF SUPPORT

Motion by Bialecki, supported by Pirrone, to grant the request for an amendment to an existing special approval for an outdoor recreational use for a C-2, Shopping Center District for Forest View Lanes to amend the hours of operation in Zone 5 on three existing volleyball courts in accordance with the submitted plot plan, on parcel number 5802-028-023-00, otherwise known as 2345 W. Dean Road, Temperance, MI 48182 to amend hours of operation on Zone 5 until 2:00 a.m. as it is consistent with hours of operation on Zone 6 and Zone 7 as shown in submitted Exhibit A.

The commission members had further discussion regarding adding conditions to be included with the motion. Bialecki denied adding any conditions to the motion. Zdybek requested the motion be read for clarification. Rector read the motion.

Roll call as follows: Voting Aye: Bialecki and Pirrone. Voting Nay: Zdybek, Lake and Bourque. Excused: Bush and Angerer. Motion denied.

PUBLIC COMMENT –

Ryan Lukasik-8042 Douglas Road - Appreciated the Commission's decision and deliberation.

Tim McAfee-9837 Pamela Drive-Mr. McAfee voiced his opinion in getting involved with the Township in regards to ordinances dealing with sound, lighting and sight to neighboring properties. Mr. McAfee requested installing decibel meters at the Forest View location, and if over the decibel reading, the courts would be required to shut down.

Karen Rideout-8112 Douglas Road - Appreciated the Commission being consistent with the previous decision.

INFORMATION – None

COMMISSION / STAFF COMMENT –

Kincaid advised there are a few items submitted that may be ready to move forward and be presented to the Planning Commission in November and with difficulty have a full quorum the Wednesday before Thanksgiving, Kincaid asked if the members could check their schedule for availability to cancel the two regular meetings on November 9th & November 23rd and have a special meeting if needed on Wednesday November 16, 2016.

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Zdybek voiced his opinion that having a liquor license and serving until 2:30 a.m. should not go hand in hand on time of activity.

Pirrone thanked and appreciated all that came out to express their concerns.

ADJOURNMENT – **The meeting was duly adjourned at 8:15 p.m.**

Respectfully submitted,
Jodie L. Rector