



Fruitland Township
White River Light Station Museum

Fruitland Township Zoning Board of Appeals Minutes of June 9, 2014

CALLED TO ORDER: 6:01 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman John Warner, Board members Penny Larson, Brian Lernowich, Judy Marcinkowski and Alternate Herbert Huch.

NOT PRESENT: Eileen Stoffan, excused.

ALSO PRESENT: Zoning Administrator Sandel, Recording Secretary Sally Dion and 26 interested parties.

AGENDA: Motion by Penny Larson, second from Judy Marcinkowski, **ADOPTED**, to amend the Agenda by removing the application for 6466 Terravita Drive, it was withdrawn, and accept the June 9, 2014 Zoning Board of Appeals agenda as amended.

5 AYES

MINUTES: Motion by Brian Lernowich, second from Penny Larson, **ADOPTED**, to accept the April 14, 2014 Zoning Board of Appeals minutes as written.

5 AYES

Chairman Warner explained the purpose and function of the Zoning Board of Appeals.

5700 Scenic Drive

61-06-012-300-0018-00

Douglas McNeil, Legal Counsel on behalf of LSI Real Estate, LLC, (Buzz's Lakeside Inn) request an appeal of the Zoning Administrator's decision that the proposed use of the patio represents an expansion of an existing use and therefore not allowed.

Appeal is according to the following article:

Article XIX, Section 19.07 A., which states that Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department or board of the Township, or bureau of the state or local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board. Applications for appeals shall be filed within five (5) days after the date of the decision which is

the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the nature and grounds for the appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

Public Hearing Open 6:08 p.m.

Zoning Administrator Sandel explained that the applicant is the new owner of what was known in the past as the Lakeside Inn which has been a resort for over 100 years. The patio itself is not a zoning issue; it is the use of the patio being considered an expansion of the original use.

Owner, Buzz Kaehler, explained a Building Permit was applied for and issued in January. He said the building plans showed a fence around the patio and seating on the patio. He is not sure why the township is considering the use of the patio as an expansion. He said that both the South Shore Marina and White Lake Yacht Club have outdoor service. He wants to run the resort as it has been historically. The proposed fence was changed from a fence to a knee wall, no gates, very open with sidewalk used to enter.

PUBLIC COMMENT

1. Jon Blyth, 5591 Oaktree Lane, stated relatives have rented rooms at the Inn several times throughout the years and for years they have had food, drinks outside, it may not have been on a patio but it was outside, they are happy the Kaehler's have purchased and want to see them continue as they have been, the outside patio enhances the resort, supports.
2. Jim Runyan, 6070 N. Scenic Woods Circle, echo's Jon's comments, believes this should be welcomed, events always held on the yard where the patio is now, supports.
3. Lois Daeschler, 7130 Starboard Drive, has been coming to this area for 58 years, we are blessed with the Kaehler's owning the resort, supports.
4. Gerald Brichan, 6633 Michillinda Road, very pleased with Kaehler's, asks how Michillinda Beach Lodge had this kind of service, supports.
5. Terry O'Connell, 5450 South Shore Drive, Lakeside Inn has always wanted the community involved, feels the Kaehler's are a great asset to Fruitland Township, supports.
6. Jeff Marcinkowski, 3767 Jay Road, approves of this project, however understands law does not allow for expansion of a something nonconforming, thinks the township should work to make it so places like Lakeside Inn would not have to come to ZBA every time they want to do something.
7. Tom Thompson, 5564 South Shore Drive, feels that eating outside is one thing, asks if the liquor is the issue, asks if the township should look into licensing the liquor.
8. Lindsay Canan, 250 Washington, Grand Haven, works with Attorney McNeil, stated the liquor control visited the site and the license allows drinks on the patio, not other areas of the resort.
9. Jon Blyth, 5591 Oaktree Lane, stated he is a member of the White Lake Yacht Club and they have signage stating where alcohol can be consumed.
10. Gerald Brichan, 6633 Michillinda Road, asks why one establishment can have an ok to do outside service and others cannot.

Chairperson Warner advised there were also several emails that will be made part of the record.

Chairperson Warner explains what will be addressed tonight is only if they will affirm or reverse Zoning Administrator Sandel's decision on if the use of the patio is an expansion.

11. Mike Reed, 5982 South Shore Drive, Whitehall, MI, asks how many of the emails received were in support.

Chairperson Warner advised an overwhelming amount were in support.

Correspondence:

1. Brad VanBergen, Winberg Construction, pictures of the use of outdoor patio activities, some recent and some date back 30 years.
2. Anne and Allan Dake, 6860 South Shore Drive, Whitehall, MI, **supports**.
3. Thomas Carmody, **supports**.
4. Don Scholl, 1007 S. Mears Avenue, Whitehall, MI, **supports**.
5. Jamison Burnside, 27 Litchfield Drive, Enfield, CT, **supports**.
6. Mindy Fauntleroy, 588 Lincoln Avenue, Winnetka, IL, **supports**.
7. Ralph Russo, Whitehall, MI, **supports**.
8. Lisa Tallarico, Whitehall, MI, **supports**.
9. Kyle Esh, **supports**.
10. Jennifer Day, 6106 Murray Road, Whitehall, MI, **supports**.
11. Amanda Tague, **supports**.
12. Kevin T. Spencer, 1505 Carleton Street, Whitehall, MI, **supports**.
13. Joanne Mcshane/Will Nutting, 6164 Murray Road, Whitehall, MI, **supports**.
14. Katie Anderson, **supports**.
15. Julie Johnson, 4989 Scenic Drive, 3661 Scenic Drive, Whitehall, MI, **supports**.
16. Nancy Coronado, 6058 Murray Road, Whitehall, MI, **supports**.
17. Chip Kenyon, **supports**.
18. Don Hummel, **supports**.
19. Jim/Bonnie McColl, **supports**.
20. Barbara McColl, 6155 Murray Road, Whitehall, MI, **supports**.
21. Carolyn Hummel, **supports**.
22. Kim/Mary McGee, **neutral**.
23. Charles/Nancy Miller, 5756 Duck Lake Road, Whitehall, MI, **supports**.
24. Frank/Susan Bednarek, 6024 Duck Lake Road, Whitehall, MI, **supports**.
25. Pete/Dawn Spiering, **supports**.
26. Matt R. VanVliet, 5628 Duck Lake Road, Whitehall, MI, **supports**.
27. Dave/Judy Eskew, **supports**.
28. Karl Jacob, 5645 Murray Road, Whitehall, MI, **supports**.
29. Andrew Fink, 415 S. Division Street, Whitehall, MI, **supports**.
30. Victor H. Baum, **supports**.
31. Sharon Smithem, **supports**.
32. David Pequet, **supports**.
33. Nelson Heinrichs, 5794 Duck Lake Road, Whitehall, MI, **supports**.
34. Bill Fauntleroy, **supports**.
35. Jerry Gill, **supports**.
36. Rebecca Kenyon, **supports**.
37. Lois Daeschler, 7130 Starboard, Whitehall, MI, **supports**.
38. Frank Lundell, 3239 Scenic Drive, Whitehall, MI, **supports**.
39. Karolyn Rillema, 5549 Scenic Drive, Whitehall, MI, **opposed**.
40. John Rintamaki, **neutral**.

Public Hearing Closed 6:37 p.m.

Board Comments:

Board Member Marcinkowski asked if the patio was the same size could it be used as it was. Zoning Administrator Sandel answers yes. She asked if the patio was the same size could they have the knee wall, Zoning Administrator Sandel answers not without zoning approval.

Chairperson Warner stated his personal opinion is this use is consistent with a resort; however, there are ordinances that must be followed.

Board Member Larson advises we are here to either affirm or reverse Zoning Administrator Sandel's decision that the use of the patio is an expansion. She stated prior interior seating was for 70 people, the outdoor patio shows seating for over 100 people, she believes it is an expansion, she also stated concerns of parking.

Reopen Public Hearing 6:43 p.m.

1. Owner, Buzz Kaehler, stated he wanted to provide correct facts, he said the plans have been redone and that the Fire Marshal has provided occupancy as follows: dining inside 120, outside patio thinks it was 80 maximum, another interior room called the event room 75 and the bar/waiting area 50. He stated that even though the patio was not as big before people used the lawn. He said they worked with Rod Siegel, Building Official; to be sure they were meeting the building code. They do not agree that the use is being expanded, they are enhancing the use not expanding it, instead of being out in the grass it is now defined, some of the issues discussed have been taken care of through the building process. Again he would say they are not expanding the use, they are only organizing the use.
2. Jim Runyan, 6070 N. Scenic Woods Circle, asked for clarification that the Zoning Board of Appeals could reverse Zoning Administrator Sandel's decision. Zoning Administrator Sandel stated that yes they could with proper evidence.
3. Lindsay Canan, 250 Washington, Grand Haven, stated the liquor license was and is still a resort class license, this allows liquor anywhere on the property, the license was transferred from the previous owner, and it included the outdoor service as they had in the past. She also stated that outdoor service part of the permit covers all the property and that outdoor service has designated hours.
4. Marcia Funnell, 6070 N. Scenic Woods Circle, stated she was at a class reunion in 2006, outdoor service was provided at that time.
5. Jeff Marcinkowski, 3767 Jay Road, stated the board members have heard all good things, however, according to ordinance the outdoor service is an expansion of the prior use.

Public Hearing Closed 6:45 p.m.

Alternate Board Member Huch stated liquor sales is regulated by state law, he explains one of the biggest issues with outdoor service is drinks can be handed to underage persons, he was advised by the liquor licensing department that alcohol must be contained within walls. He stated he has a problem because the only thing they have to work with is what was given to them, he is hearing one thing and looking at something different, thus he feels the application is misleading. At this point he would not rule in favor of, he needs facts.

Board Member Marcinkowski had a few comments to make about the outdoor alcohol service; this is a Grandfathered non-conforming business in a residential district. From all the pictures that have been sent, comments that have been made, there was nothing ever said about purchasing alcohol outside. What has been said was when waiting for a table; they walked outside with their beverage. No one said that alcohol was bought outside; this use was never allowed and cannot be allowed. The plan submitted for review shows a tiki bar and 112 seats, and if that plan is approved they are approving that plan. She stated she called the White Lake Fire Authority to ask if anyone had been out to do occupancy rating, she was told yes for inside; however, to the gentlemen she spoke with had no knowledge if the occupancy rating had been done for the outside yet. According to him the fire code for that is not real clear. She advises she went to the website to see how it was being advertised. She quoted from their website; "we will be adding an outdoor patio, lake view bar and expanded docks for our guests and restaurant visitors". This indicates there will be a bar outside.

Owner Buzz Kaehler stated from the audience that the Lakeview Bar is inside with full windows for view of the lake.

Board Member Marcinkowski stated that is not what it looks like from the plans. She also indicated that one of the recognized goals of our township zoning and zoning throughout the state of Michigan is for the gradual but eventual elimination of Grandfathered Non-conforming uses.

Chairperson Warner stated that what Board Member Marcinkowski stated is very true and that is what the township zoning ordinance requires. The question today is if this use is consistent with what was always there or if it is being expanded, according to Zoning Administrator Sandel it is an expansion. Not much evidence has been provided to the contrary, in the pictures but you can't really tell what is going on in them, you can see people sitting at tables, however, you cannot tell if they have drinks. He believes Zoning Administrator Sandel was troubled by the same lack of evidence, thence his decision. As much as he thinks the use is a probably a good use we still have our zoning to conform with. What we are here to do is either affirm or reverse Zoning Administrator Sandel's decision. He stated we need to stay on track with that, the other information maybe good background but we need to stay with the point at hand.

Board Member Lernowich stated he can see the other Board Members points, however, he asks what it would take to streamline this and find middle ground; so things can move forward, maybe stall but keep the program going so it could happen, he feels this is a good thing for the interim, this enhances his township.

Zoning Administrator Sandel stated there are two ways you could go about that, one is ask them to re-submit a realistic plan to show what they are proposing seeing it's not the same as on the plan we have, or you could determine by the testimony of the people here what the use is and what you think the capacity would be to keep the same capacity they had in the past without exceeding it.

Board Member Lernowich asks if it would be logical for Zoning Administrator Sandel to sit down with the proper people, maybe some Planners to discuss this.

Zoning Administrator Sandel stated he has already done that, however, he has an opinion from the township attorney based on the plan and he cannot overrule the attorney.

Alternate Board Member Huch stated he surely believes we could find neutral ground, he understands they have a liquor license, however believes we need to know exactly what it allows then they can work from there. He believes it would be nice to sit out there. He asked about the Fire Marshal's report. He is not here to shoot anything down.

Board Member Larson asked it would be reasonable to request a Zoning Application for a Variance?

Zoning Administrator Sandel explained you cannot approve a variance for a non-conforming use, however, you can determine what the use was and it cannot be expanded. The building cannot be expanded. He stated the board members can reverse his decision and find that the use was say so many tables.

Board Member Marcinkowski asked how long it would take to create a resort district zoning.

Zoning Administrator said it could take as long as three years, first the Master Plan needs to be amended and then the district needs to be created, public hearings held.

Open Public Hearing 7:09 p.m.

1. Brad VanBergen, Winberg Construction, 6686 Water Street, Montague, stated the Fire Marshal was there on May 1 and the occupancy was rated as follows: Bar area 37, main dining 117, outside 94 and the lounge 12. He did speak with the Liquor Control, he does not have it in writing but they only said the area needed to be defined, that is why they did the knee wall. He talked about what was permitted on the Building Permit; it did not include the tiki bar. He stated again this is not an expansion it is an enhancement, it is nothing more than reorganizing. In his opinion some of the stuff discussed has already been worked out through the building process. If this is tabled he can be sure they get the information they want or that is needed.
2. Jim Runyan, 6070 N. Scenic Woods Circle, asks for clarification that the board could reverse the Zoning Administrators decision and then determine how many tables can be there. Zoning Administrator Sandel answers yes that is correct.
3. Lindsay Canan, stated that when the Groessl's owned it they had a resort class liquor license which allows liquor anywhere on the property, this license also included an outdoor service permit, this license was transferred and is the same license they had in the past.
4. Marcia Funnell, 6070 N. Scenic Woods Circle, stated she attended a class reunion there in 2006 and the waitress came outside and took drink orders at that time.
5. Jeff Marcinkowski, 3767 Jay Road, stated the board has heard all the good things, please keep in mind this is still an expansion of the use and according to the ordinance anytime they want to do something they will need to come back to the township for review.
6. Terry O Connell, 5450 South Shore Drive, asks if they want to pave the parking lot would they have to get approval because they are non-conforming. The answer is not if it is the same size and in the same location, otherwise yes and again that would be an expansion.
7. Buzz Kaehler, appreciates the support, does not want to come before the Board of Zoning Appeals every time they want to do something, he is open to the concept for the next time it can be put on the table to get the property rezoned, he knows he will not be allowed to do whatever he wants, however, he would like to be able to allow for outdoor dining/bar.
8. Bill Brookstra, 3355 Scenic Drive, challenges the board to do tonight whatever they have to do so this new owner can make some money.

Public Hearing Closed 7:29 p.m.

Consensus of the board members is they cannot design a plan; they must make a decision on what was provided to them.

Motion by Penny Larson, second from Judy Marcinkowski, **ADOPTED**, that the Zoning Board of Appeals finds from the evidence presented that the establishment of an outdoor eating with outdoor service and outdoor alcohol sales is an expansion of the use of the property and structures from what was in place at the time the use became nonconforming. Michigan law does not allow for an expansion of pre-existing nonconforming use nor does it allow for change of one nonconforming use to another nonconforming use, therefore the decision of the Fruitland Township Zoning Administrator, Donald Sandel, is affirmed.

Roll Call Vote: Huch-AYE, Lernowich-NAY, Larson-AYE, Marcinkowski-AYE, Warner-AYE.

ADJOURNMENT

Motion by Penny Larson, second from Brian Lernowich, **ADOPTED** to adjourn the June 9, 2014 Zoning Board of Appeals meeting at 7:44 p.m.

5 AYES

Chairperson Warner advised he has up to 30 days to appeal in Circuit Court.

Respectfully Submitted,

Sally Dion
Recording Secretary