

**ACME TOWNSHIP
Zoning Board of Appeals
October 14, 2004**

Thursday, 7:30 p.m.
Acme Township Hall
Acme, Michigan

Meeting called to Order at 7:30 p.m.

Members present: H. Smith (Vice Chair), L. Belcher, P. Collins

Members excused: N. Knopf, J. Kuncaitis

Staff present: J. Hull, Zoning Administrator
S. Corpe, Recording Secretary

1. **Review and approval of the agenda, inquiry as to conflicts of interest: (Belcher/Collins)** Smith noted that when he was an active real estate agent, he was associated with the Acme Coldwell Banker office. His license is currently in referral status. The ZBA did not feel that this represented a conflict of interest that would cause him to recuse himself from the considerations.
2. **Correspondence:** None
3. **Reports:** None
4. **Hearings:**
 - a) **Public hearing for Application #2004-7Z, Mark & Beth Whiting, 6776 Deepwater Point Rd., Williamsburg MI 49690, who has requested a variance of §6.11.1, Schedule of Regulations which requires a front-yard setback of thirty feet in an R-2, One-Family Urban Residential district:** Belcher read the public hearing notice into the record. Mrs. Beth Whiting was present in support of the application.

Public Hearing opened at 7:36 p.m.

Tracy Mariage, 3548 Dock Road, stated that he is one of the nearest neighbors and that he does not find the tennis court in any way objectionable. Even though it's a private tennis court, he feels it enhances the neighborhood.

Mrs. Whiting stated that the reason for the placement of the tennis court was to preserve as many existing trees as possible and to maintain a setback from existing wetlands areas. She also assumed that the companies contracted to build the court and clear trees had pulled all necessary permits, but later found they had not.

Mr. Brent Larkin, 3594 Dock Road, feels that the tennis court is an asset to the neighborhood and has no objection to the variance being granted.

Hull stated that he took three photographs of the tennis court area that he did not place in the packets because they are not very descriptive. Even though the fencing is not complete, the tennis court area is not very noticeable. Hull also noted that in his report he stated that Basic Conditions A and E had not been

met, but he is uncertain if he assessed the situation properly in these regards. As to Basic Condition A, he had not previously understood that one goal of locating the tennis court as it was to preserve the maximum amount of trees rather than just a personal preference. Regarding Basic Condition E,

Public Hearing closed at 7:40 p.m.

Smith stated that he received several phone calls opposing the variance request. He encouraged the individuals to come to the meeting and voice their concerns publicly during the hearing, but they have not appeared.

Belcher tends to agree with Hull's original assessment of Basic Conditions A and E. Regardless of which way those issues are ultimately interpreted, he notes that none of the Special Conditions appear to have been met, and at least one must be for the ZBA to be permitted to grant a variance. Further, it is difficult, if not impossible, to judge whether or not the trees destroyed for the court as situated were more or less valuable to preserve than the trees that are still there. The trees that are gone cannot be observed. It would have been appropriate to seek a variance before construction, not after the fact.

Mrs. Whiting expressed some confusion. Belcher repeated himself. Smith explained the requirements for meeting basic and special conditions, noting that even in cases where the ZBA is sympathetic to the request, if the appropriate set of conditions cannot be demonstrated as being met, the ZBA is unable to grant the request.

Belcher does not believe that the ordinance will permit the ZBA to grant the request.

Motion by Belcher, support by Collins to deny Variance request #2004-7Z as no Special Conditions have been satisfied. Motion carried by unanimous roll call vote.

- b) Public Hearing for Application #2004-10Z, East Bay Medical Properties, LLC, 3229 Scenic Hills, Williamsburg, MI 49690 who has requested a variance of §6.11.1, Schedule of Regulations, which sets a maximum lot coverage of 30%:** Belcher read the public hearing notice into the record. Dr. Mark Saunders and Matt, Kerridge Construction were present to support the application. Matt stated that the proposed dermatology office has already successfully sought a continuation of a non-conforming use and has received approval from the Planning Commission and the Township Board. The issue is that the currently-proposed improvements exceed the maximum permissible amount of per-lot impervious surface coverage. The site plan includes 30 parking spaces as required by the Zoning Ordinance. The Planning Commission approved the project with 26 parking spaces, as the ordinance allows the Commission to approve modifications to the prescribed parking requirements. Dr. Saunders stated that he performs a procedure for patients with facial skin cancer that requires a 2-hour waiting period while the tissue removed is examined to see if all of the tumor has been removed. He is the only doctor north of Grand Rapids who performs the procedure. He can handle six cases at a time and hopes to expand further. Patients undergoing the procedure can be present on site for the entire day along with the rest of the patient workload, and often bring extra family members. For this reason, he feels he needs the additional parking spaces. Dr.

Saunders has also found that he has often had too few parking spaces in previous locations. He is planning significant improvements to the property, including relocation of the existing parking area out of the current front yard of the property and closure of a curb cut on US 31 North.

Public Hearing opened and closed at 7:57 p.m., there being no public comment.

Smith agreed that the Planning Commission was very impressed with the proposed improvements to the project. It does appear that there are two requirements of the ordinance that are mutually exclusive in this case: the maximum impervious surface coverage rule or the parking space rule. Continued use of the grandfathered non-conforming building was granted at a previous meeting; it would not seem to make sense to require that part of the building now be removed to assist in meeting maximum lot coverage requirements.

Collins asked Dr. Saunders how many parking spaces he has at his current facility; Dr. Saunders couldn't recall. Smith noted that Dr. Saunders also hopes to have an associate in the near future, which would also seem to increase the need to grant the request to retain all 30 parking spaces. Belcher noted that the site is fairly flat, so runoff from the impervious surfaces across to other properties seems like a negligible issue.

Collins asked where the retention basins will be located; Matt pointed them out. One will be near the building and one on the west side of the property. Collins is aware of flooding problems in the area; Smith noted that approval of the site plan from the Soil Erosion has been received. Hull stated that when he wrote his report he was unaware of the special procedures and parking requirements, and is more comfortable with permitting the full 30 parking spaces.

Smith mentioned that staff has recommended that the customary fee for this hearing be waived. Corpe reported that the impervious surface coverage issue was identified late in the Planning Commission hearing process and after the previous ZBA hearing regarding this development had been held. This was staff error rather than applicant error, and as such she does request that the fee for the additional hearing be waived.

Motion by Belcher, support by Collins, to approve Application #2004-10Z and to waive the application fee for this matter. Motion carried by unanimous roll call vote.

- c) **Public Hearing for Application #2004-11Z, Brent Larkin, 3594 Dock Rd, Williamsburg, MI 49690 for an extension of a nonconforming use under §9.5 Extension of Nonconforming Use of Structure:** Belcher read the public hearing notice into the record. Mr. Larkin was present in support of his application. He stated that his parcel is of grandfathered, non-conforming size for the zoning district, and is used for purely residential reasons. Hull noted that because this hearing is subject to Article IX of the ordinance and not Section 5.3.3, the need to

Public Hearing opened at 8:12 p.m.

Mr. Mariage is an adjacent neighbor to the subject parcel. He has no objection to the request being granted. The property, by size, location and natural features, is unlikely to be used for agricultural purposes and has always been well-maintained.

Public Hearing closed at 8:13 p.m.

Belcher asked what the side yard setback would be if the zoning was residential to match nearby properties. Hull replied that the setback would be 10' and the building would not be non-conforming.

Motion by Collins, support by Belcher to approve Application #2004-11Z, there appearing to be no reason why permitting enlargement of the non-conforming structure would be contrary to public health, safety or welfare. Motion carried by unanimous roll call vote.

- d) **Public Hearing for Application #2004-12Z, Bryan Punturo, 1401 US Highway 31 N, Traverse City, MI 49686, who has requested a variance of §6.2.2, Private Swimming Pools, which requires a pool to be located in a rear yard and to be surrounded by a four-foot safety fence:** Mr. Punturo was present to support his application. He is requesting two things; permission to place a swimming pool in what the "generic" definitions of the township term the side yard, and permission to construct the pool without a surrounding safety fence. As to the first request, his parcel is an unusually-situated piece of land to which he does not believe the conventional descriptions are applicable. As to the second request, Mr. Punturo is proposing use of a mechanized pool safety cover that he states is commonly accepted by many building codes in lieu of a fence. He maintained that it is actually safer, because if children climb the fence they can access the pool. Using the mechanized locking cover, which will support the weight of a person without collapsing, the pool cannot be entered.

Belcher read the public hearing notice into the record.

Public Hearing opened at 8:19 p.m.

Hull read a letter dated October 13, 2004 from Jade Venture Group LLC in opposition to the variance request, which is included and incorporated by reference. Hull addressed the three key points of the letter stating that it is inaccurate as to placement of the pool in relation to the home. The pool is planned to be more than 6' from the house; statement #2 is the result of a miscommunication between Hull and the applicant, and statement #3 appears to Hull to be more of an interpersonal commentary than anything else.

Smith had Hull clarify that according to standard ordinance definitions, the pool is proposed to be located within what the township considers the west side yard of the property, the access point being on the south side of the property.

Public Hearing closed at 8:24 p.m.

Hull also reported that the topography of the area the township defines as the rear yard would prohibit placement of the pool in this area. Belcher stated that for this reason, he believes Special Condition B is satisfied (Hull had stated that it was not.)

Smith believes that the variance application should be handled in two parts: 1) consideration of the location variance and 2) the fence requirement variance.

Motion by Belcher, support by Collins to approve part 1 of Application #2004-12Z, permitting the pool to be constructed in the side yard of the subject property. All Basic Conditions and Special Condition B have been met.

Turning to the second part of the request, it seems to involve new technology that was not contemplated by the ordinance when written. It may be that the ordinance should be amended to permit use of the locking pool cover. As part of his research he spoke to someone at Farm Bureau Insurance who said that her company will not write policy coverage for the locking pool covers. He spoke to an individual in the Farm Bureau Insurance claims office in Traverse City who has divided sentiments about the pool covers. He recently wrote a policy for an individual with a home and pool in a secluded location, but Hull got the impression that he would not have written the policy if the location had been in a subdivision. He has learned about a concept called "moral hazard," which means that just because the locking cover is installed doesn't mean it would be used.

Smith asked what Mr. Punturo's insurance company has said about the proposed pool cover. Mr. Punturo stated that the cover costs about \$10,000 to install – well more than the cost of a fence. If the door of a fence is left open, the value of the fence as a barrier is negated. His insurance agent seems familiar with the covers and is not hesitant to issue coverage. He has brought a representative from Larry's Pool & Spa who provided information about the coverage systems. He states that they are BOCA approved as a solution in lieu of fencing. In this circumstance, Mr. Punturo hopes to keep the pool exposed to the view of East Bay. He might be amenable to erecting fences on two sides of the pool, and the house is on the third side. There are apparently add-on devices that cause an alarm to ring if the cover is open and the water comes into motion. The switch to the cover would be mounted at least 52" from the ground, and the house will be using an alarm system as well.

Hull provided several photos that help to demonstrate the distance between the Punturo house and nearby homes. Mr. Punturo's home is somewhat removed from the subdivision below.

Belcher reported speaking to a neighbor of the property who has not come to the meeting. This individual did not favor use of the locking pool cover instead of a fence, and stated that he is aware that in Elk Rapids someone is using a clear fence that would still permit enjoyment of the view. Collins believes that the ordinance does seek to protect small children from unattended pools. Either a fence or a cover can be effective, and either can be left open. One concern he has would be what happens if the mechanism breaks or if a future owner of the property simply chooses not to use it.

Mr. Punturo believes that while a locking cover in lieu of a fence may be new ground for Acme Township, it is becoming common elsewhere. He would not propose using one, at great expense, if he did not believe it was truly the best alternative. State building code recognizes the units as a viable alternative. Collins stated that it might or might not be a good idea for the township to consider amending the ordinance to permit use of the covers. Belcher suggested

that since winter is coming on, perhaps Mr. Punturo would like to have his hearing continued pending Planning Commission deliberation regarding a possible ordinance amendment. Belcher concurs with the staff assessment that no Special Conditions have been met, so regardless of his sentiments he does not believe the ZBA can approve the request. Mr. Punturo stated that he wants to install the pool this fall, and that installation of the cover is integrated – it is difficult to add later. Smith feels that it might be a smart approach to install the fence and wait to install the deck and cover facilities later after the township has had time to consider a possible ordinance amendment. Mr. Punturo concurred.

Motion by Belcher, support by to Collins to deny the request to substitute a locking pool cover for a fence surrounding the pool, no Special Conditions having been met. Motion carried by unanimous roll call vote.

- e) **Public Hearing for Application #2003-13Z, Ken Schmidt, 402 E. Front St., Traverse City, MI 49686, who has requested a variance of §7.4.1 Signs which limits free-standing business signs to thirty-two square feet:** Belcher read the public hearing notice into the record. Connie Rountree, Office Manager for Coldwell Banker Schmidt Realty's Acme office was present in support of the application. Hull believes there is merit in the request to install an "open" sign in one side of the support pole for the main freestanding sign as stated in his report. Corpe believes that the variance should not be granted, feeling that it should be possible to modify the existing sign in the cabinet to include the needed designation of whether the business is open or closed. Further, while neon "open" signs are being tolerated in windows, the ordinance currently draws a distinction between regulated signs and "window displays," which are not currently regulated. Our regulated signs do not permit the usage of bare light sources in sign lighting; thus, a neon "open" sign would not be permitted. Ms. Rountree stated that the sign in the current sign cabinet cannot be modified due to Coldwell Banker franchise agreements. She is also unsure of whether or not they can add to their existing exterior wall signage. Due to the location of the building and its design, she states that it is nearly impossible for people to be able to tell that they are open seven days a week. She agrees that the neon "open" signs are not in keeping with the atmosphere Acme is trying to create. She is confident that a non-neon approach to the sign can be found.

Corpe stated that Acme is known for having a very restrictive sign ordinance, and that our businesses nearly universally say they feel they don't have sufficient visibility regardless of precise location. If this request is granted, it's likely that many more similar requests would be received.

Belcher stated that in his 20 years on the ZBA he does not recall a time when a variance of the sign size requirements has ever been granted. Just a year or two ago, additional signage space for an "open" sign on the Apple Hollow Nursery freestanding sign was similarly denied. He believes as Corpe does that if the additional signage is permitted, every business in the township will ask for a similar consideration. He believes that there is little drop-in traffic to real estate offices; Ms. Rountree stated that actually there is quite a lot.

Smith believes that there is still space available on the exterior of the building itself for additional signage. Each building elevation (side) can contain up to the lesser of 20% or 100 sq. ft. of signage coverage. Signs can be internally or down-lit.

Belcher believes that if the request is granted, the general business public will desire and expect an amendment to the ordinance to allow everyone to do it. Smith agreed that it should be possible to place additional signage on one or more faces of the building. Ms. Rountree questioned which approach would ultimately be more aesthetically pleasing, a small sign on a pole or a building face cluttered with signs. Belcher noted that regardless of whether or not the ZBA agrees from an aesthetic perspective, it can only do what the ordinance permits it to do and consider what the ordinance permits it to consider. Smith concurred.

Ms. Rountree stated that based on the information she received prior to the meeting from Hull, she was not expecting a negative outcome to the request.

Motion by Belcher, support by Collins to deny Application #2004-13Z because Basic Condition D and none of the Special Conditions have been met. Motion carried by unanimous roll call vote.

5. **Other Business:** None.

6. **Approval of minutes from the September 16, 2004 regular meeting:**

Motion by Collins, support by Belcher to approve the minutes of the September 16, 2004 meeting. Motion carried unanimously.

Meeting adjourned at 9:30 p.m.