

**BEDFORD TOWNSHIP
BOARD OF ZONING APPEALS (BZA)
REGULAR MEETING MINUTES
MONDAY, AUGUST 3, 2009 OFFICIAL MINUTES**

Present: Korleen Bialecki (Chair), Bob Potter (Alternate), Richard Brunt, Gail Hauser-Hurley (Township Board Trustee Representative), and Mike Bassinger (Planning Commission Representative). **Also Present:** Duane Tucker (Planning, Zoning, & Building Administrative Assistant, Board of Zoning Appeals (BZA) Facilitator, Land Division Administrator, and Recording Secretary), Dennis Kolar (Building Official), and Phil Goldsmith (Township Attorney-Lennard, Graham & Goldsmith P.L.C.). Absent (Excused): Ron Herr.

Call to Order: Ms. Bialecki (Chair) called the August 3, 2009 “Regular” meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.

Ms. Bialecki introduced the members of the Board and Township facilitator(s) to the public present. This meeting was held at 8100 Jackman Road, Bedford Township Government Center, in Board Room.

Citizen Participation Information: Ms. Bialecki welcomed the audience and shared citizen participation guidelines for public commentary.

Approval of Agenda: Motion to approve the “agenda” as presented was made by Ms. Hauser-Hurley and seconded by Mr. Bassinger. Motion passed.

NEW BUSINESS (CHAIRPERSON): Ms. Bialecki opened the new business and public hearing with the first variance hearing.

First (1st) variance petition:

The Appeal of Crosscreeks VIII LLC, 8160 Sunset Lane, Sylvania, OH 43560, requesting a variance for a proposed accessory building to be located in a front yard (400.1903 Accessory Building), in an RM-1 District (Multi Family Residential District), on land described as 58-02-203-067-00, Lot # 67 Crosscreeks Subdivision (7543 Crosscreeks Drive).

Ms. Bialecki swore in the applicant/authorized agent (Mike Hojnacki, 8160 Sunset Lane, and a partner of Crosscreeks VIII LLC) and explained the voting process followed by background information presented by Mr. Tucker. Mr. Hojnacki opted to continue with the variance process. For the record, ‘Mike Hojnacki of the Crosscreek VIII LLC’ is the “Authorization to Act as Agent/Representative” for this variance appeal. ‘Cross Creek VIII LLC’ purchased this lot on June 14, 2009 as per the Monroe County Register of Deeds # 2009R11555. The previously described parcel is approximately .803 ± acres in size while having approximately 304.26 ± foot frontage on Crosscreek Drive, and is being identified as Lot # 67 in the Crosscreek Platted Subdivision. The following Bedford

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Township Ordinance is in effect: *400.1903 Accessory Buildings. Sec. 1903. Accessory buildings, except as otherwise permitted in this Ordinance, shall be subject to the following regulations: 4. Accessory buildings shall not be erected in any minimum side yard setback nor in any front yard pursuant to the Schedule of Regulations set forth in Article XVIII of the Bedford Township Zoning Ordinance. The placement of all accessory buildings erected in a rear yard shall conform to the Accessory Building Table requirements set forth in this Article XIX, Section 1903, Subsection 7 of the Bedford Township Zoning Ordinance. Definitions. Yards. The open spaces on the same lot with a main building unoccupied and unobstructed from the ground upward except as otherwise provided in this Ordinance, and as defined herein:*

a. Front yard. An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main building.

Mr. Hojnacki stated that they just recently purchased this property from the bank that the bank had taken back the lot/construction a couple of years ago. Mr. Hojnacki noted that there are 9 proposed existing parking spots on the approved "site plan" whereby we are requesting to build a garage that houses 8 individual parking spots and an enclosed dumpster in the same location. Thus, each of the Townhouse Condo unit(s) would have an individual garage unit. In our opinion, this proposed garage in the front yard would enhance this area (better aesthetics) whereby also making it more saleable and increase the value. In addition, the proposed garage would add some privacy to the court-yard area (between the buildings). The proposed individual garage would give each Townhouse Condo unit an additional place to store belongings, be safer (more secured) for the vehicle, and keep out of the weather elements.

Ms. Bialecki opened the BZA meeting to public commentary.

Mrs. Jewel Patton (1612 Huntcliff Court and President of the Crosscreek Home Owner's Association) addressed the BZA. Mrs. Patton noted that this Townhouse is also part of the Crosscreek Home Owner's Association; she is representing 59 homeowners and a majority of apartment owners. Mrs. Patton stated that this Townhouse does not resemble any of the other Crosscreek Townhouses, for it has 4 different colors (exterior) and is not done in the same style or fashion as others, which makes it stick out like a sore thumb. Mrs. Patton noted that this would make it more difficult to sell their property because of this unit. Mrs. Patton also expressed that for 2.5 years this was an unfinished building that the immediate community had to deal with. Mrs. Patton expressed that this variance proposal would create an eyesore to the Crosscreek Development, whereby the parking lot would be adequate.

Mrs. Patton eluded to miscellaneous deed restrictions that state "they can't build beyond the front lot line (Article 5, Building Restrictions-Section 2" and also the applicant should have petitioned the Crosscreek Home Owner's Association first. The BZA took a 7-

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minute recess (7:15 p.m. to approximately 7:22 p.m.), whereby Mr. Tucker made copies of the relevant deed restrictions to be shared from Mrs. Patton.

Mr. Mike Herron (7575 Chapel View Court) stated that he lived on Chapel View Court for over 30 years, whereby he is very familiar with the curb and landscaped dirt mounds. Mr. Herron expressed vehicle traffic safety concerns over the proposed garage construction in the front yard.

Mrs. Dawn Perry (1600 Huntcliff Court, Secretary and Treasurer to the Crosscreek Home Owner's Association) also expressed traffic safety concerns over the proposed garage in the front yard. In addition, Mrs. Perry expressed concern as to how this would impact the value of their homes, apartments, etc.

Ms. Bialecki closed the public hearing while having no further public comment.

Further BZA discussion followed. Mr. Kolar noted that he believed the set-backs noted in the Deed Restrictions actually pertain to the apartments or they may only pertain to different developments. Mr. Goldsmith suggested that the BZA base their decision on Township Ordinance, not the Deed Restrictions. Bedford Township will only enforce the Ordinance regulations, not miscellaneous deed restrictions. On the other hand, if these deed restrictions in fact apply to this particular lot, the Crosscreeks Home Owner's Association could file suit in Monroe County Circuit Court, provided the BZA grants the variance. The Crosscreeks Home Owner's Association has an independent cause of action available to them.

Mr. Hojnacki stated that the proposed garage would be one (1) car garages for each unit with additional parking in the whole front of the building with two (2) entrances to this project. Mr. Hojnacki noted that the garage (height less than 12' to the peak) would be placed behind the mound, whereby this would not impede or block the road visibility. Each garage is individually divided and specifically assigned to one (1) of the condo units. Mr. Hojnacki further stated that they are doing the proposed garage specifically for aesthetic purposes and not wanting to create an adversarial situation with any of the neighbors. Basically we are trying to put this lot and development back in shape after being taken over by the bank for 2.5 years. Mr. Hojnacki stated that the proposed garage would have a landscaped mound to create a more natural view. Mr. Hojnacki emphasized that he is trying to work with the Crosscreek Home Owner's Association, open to suggestions, and was not made aware of any of the deed restrictions at the bank closing.

Mr. Brunt questioned the view impact of the back of the proposed garage on/as traveling in the area. Mr. Hojnacki stated that the existing mound (4' in height) would be leveled off to create a mound the whole length of the garage. Mr. Hojnacki stated that the proposed garage is just shy of 11' (10.8') from the property line and 22-23' from the edge

of the road. Mr. Hojnacki stated that from the front of garage to the front of the condo is 38’.

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Mr. Bassinger noted that after making a site visit, the mounds and placement of the proposed garage didn’t seem to pose a safety problem. Mr. Bassinger stated that one of his concerns is the garage being placed outside of the building line that could create a precedent (garages in the front yard down the whole development). Mr. Hojnacki stated that the reason they looked at a garage concept was to create a more aesthetic view of the condo. In addition, the individual garage for each condo unit would make the condo more private, secure, and saleable.

Mr. Tucker shared the following with the BZA: *Testing The Practical Difficulty of Non-Use Variances (Michigan Planner-June/July 2009). Test one (1st) to determine a practical difficulty is: Are the regulations unreasonably restrictive? Would conformity with the code(s) be unreasonably burdensome? Test two (2nd) in determining a practical difficulty is: Is the applicant receiving a privilege not available to other property owners? Would a variance do substantial justice to the applicant as well as the neighborhood? The third (3rd) test in determining a practical difficulty is: Is the property unique? The fourth (4th) test in determining a practical difficulty is: Is the problem self-created?*

Mrs. Bialecki stated that the BZA addresses each proposed variance based on its own unique-special circumstances, while applying the standardized “practical difficulty tests”. The Court System has established four (4) standards or test that determine practical difficulties are evident in granting or not granting a variance.

Motion by Mr. Potter to deny the following variance petition/request: The Appeal of Crosscreeks VIII LLC, 8160 Sunset Lane, Sylvania, OH 43560, requesting a variance for a proposed accessory building to be located in a front yard (400.1903 Accessory Building), in an RM-1 District (Multi Family Residential District), on land described as 58-02-203-067-00, Lot # 67 Crosscreeks Subdivision (7543 Crosscreeks Drive). This variance petition is denied due to the following reasons: first, there is no hardship or practical difficulty that is not self-created; secondly, the proposed variance petition does alter the essential character of the neighborhood/area; and thirdly, the petition variance is not due to unique circumstances peculiar to this property. Ms. Hauser-Hurley seconded the motion for discussion purposes.

The motion carried on a roll call vote as follows: Voting Aye: Bassinger, Brunt, Hauser-Hurley, and Potter. Voting Nay: Bialecki. Variance petition is denied.

Second (2nd) Variance Petition

The Appeal of Larry and Dorothy Poskarbiewicz, 6615 Sandywell Drive, Temperance, MI 48182, requesting a variance for a proposed accessory building to be located in a front yard (400.1903 Accessory Building), in an R2-A District (Single Family Residential

District), on land described as 58-02-575-009-00, Lot #8 Supervisor's Plat of Lan-Ell Acres (6615 Sandywell Drive).

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Ms. Bialecki swore in the applicant/authorized agent (Larry Poskarbiewicz, 6615 Sandywell Drive) and explained the voting process followed by background information presented by Mr. Tucker. Mr. Poskarbiewicz opted to continue with the variance process. The previously described parcel is approximately .85 ± acres in size while having approximately 168.7 ± foot frontage on Smith Road and 222.0 ± foot frontage on Sandywell Drive, while being identified as Lot # 8 in the Supervisor's Plat of Lan-ell Acres platted subdivision. Lot # 8 in the Supervisor's Plat of Lan-ell Acres platted subdivision is considered a corner lot. In addition, this corner lot has exceptional topographical conditions in the hill and terrain. The proposed detached garage has the width of 26 feet, length of 32 feet and height of 9 feet or 832 foot in area. The following Bedford Township Ordinance is in effect: *400.1903 Accessory Buildings. Sec. 1903. Accessory buildings, except as otherwise permitted in this Ordinance, shall be subject to the following regulations: 4. Accessory buildings shall not be erected in any minimum side yard setback nor in any front yard pursuant to the Schedule of Regulations set forth in Article XVIII of the Bedford Township Zoning Ordinance. The placement of all accessory buildings erected in a rear yard shall conform to the Accessory Building Table requirements set forth in this Article XIX, Section 1903, Subsection 7 of the Bedford Township Zoning Ordinance. 400.201 Definitions: Yards. The open spaces on the same lot with a main building unoccupied and unobstructed from the ground upward except as otherwise provided in this Ordinance, and as defined herein: Front yard. An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main building. Lot, corner. A lot where the interior angle of two adjacent sides at the intersection of two streets is less than 135 degrees.* For the record, eleven (11) property owners expressed support for this variance petition. For the record, the Board of Zoning Appeals (BZA) granted a "2.5-foot front yard fence variance on a corner lot" on November 13, 2006.

Ms. Bialecki opened the BZA meeting to public commentary.

Mr. Poskarbiewicz stated that his house is built on a hillside, which poses accessory building construction placement problems (build 6' up from current driveway or bury it in the ground). This hillside is right behind the house (to west) and the hill extends to the north. The only suitable construction place ends up to be in the front of the building due to this lot being a corner lot, having 2 front yards. The proposed placement of the accessory building would be aesthetically, natural, and practical. If we placed the proposed accessory building in the back of the dwelling, it would be in direct line when we walk out of our house and in line with our neighbor to the west as they would walk out of their back yard. The proposed placement of the accessory building would not require digging into the ground or elevating the structure while maintaining positive drainage and not having a negative drain situation with the neighbors. Mr. Poskarbiewicz also alluded that they have a very large lot and presented 11 letters of variance support. Mr. Poskarbiewicz stated that the accessory building design would

match the home roof, shingles, etc. Mr. Poskarbiewicz stated that this garage would be only used to house his lawn equipment, additional storage, and hobby car(s) storage
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(1941 Oldsmobile). This hobby car storage is for my personal hobby and not for business purposes.

Ms. Bialecki closed the public hearing while having no further public comment.

Ms. Hauser-Hurley suggested that the fenced in area parallel to Smith Road should be enclosed to the east or all materials/equipment/etc. housed in this fenced in area be stored in the proposed detached garage if the variance is granted. Mr. Brunt stated that if the proposed variance is granted, “the proposed detached garage (accessory building) shall be used only for R-2A (One Family Residential Zoned District) purposes that are allowed/permitted in the Zoning District where the accessory building is erected, and no commercial or business uses/activities are allowed.”

Mr. Poskarbiewicz agreed that if he were granted the proposed variance, the small fenced in area parallel to Smith Road would be eliminated.

Motion by Ms. Hauser-Hurley to grant/approve the following variance petition/request: The Appeal of Larry and Dorothy Poskarbiewicz, 6615 Sandywell Drive, Temperance, MI 48182, requesting a variance for a proposed accessory building to be located in a front yard (400.1903 Accessory Building), in an R2-A District (Single Family Residential District), on land described as 58-02-575-009-00, Lot #8 Supervisor's Plat of Lan-Ell Acres (6615 Sandywell Drive). Conditions of variance approval: The applicant shall satisfactorily meet all Michigan Building Code requirements and Township Ordinances while securing proper building permits (electrical, mechanical, & building permits). The proposed detached garage (accessory building) shall be used only for R-2A (One Family Residential Zoned District) purposes that are allowed/permitted in the Zoning District where the accessory building is erected, and no commercial or business uses/activities are allowed. The fenced in area parallel to Smith Road shall be eliminated/removed within three (3) months of the garage completion. All materials/equipment/etc. housed in this fenced in area shall be stored in the proposed detached garage. Reason being and the practical difficulties are: this lot has 2 front yards as a corner lot and double the front-yard set-back restrictions; the unique topography and elevation of the lot; and the existing location of the existing dwelling. The variance is not materially injurious to surrounding properties and does not create a negative impact within the existing neighborhood. Mr. Brunt seconded the motion for discussion purposes.

The motion carried on a roll call vote as follows: Voting Aye: Brunt, Hauser-Hurley, Potter, Bassinger, and Bialecki. Voting Nay: None. Variance petition is granted/approved.

Approval of Minutes: Motion to approve the BZA minutes as revised for June 1, 2009 (regular meeting) made by Ms. Hauser-Hurley and seconded by Mr. Bassinger. Motion

carried. The minutes of June 1, 2009 are approved and official as so noted. Mr. Potter abstained from the vote.

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Public Comment: None.

Board of Zoning Appeals/Township Representative Comments: The next regular BZA meeting is scheduled for Tuesday, September 8, 2009 with all materials to be submitted by Monday, August 17, 2009 (noon).

Adjournment: Ms. Bialecki duly adjourned the meeting at approximately 8:25 p.m.

Respectfully submitted,

Duane L. Tucker,
BZA Recording Secretary & Facilitator

ANY LOT SPLIT/DIVISION VARIANCE GRANTED MUST BE RECORDED WITH THE MONROE COUNTY REGISTER OF DEEDS WITHIN SIX (6) MONTHS OF THIS BOARD'S MEETING MINUTES APPROVAL. SECONDLY, ANY VARIANCE GRANTED ALLOWING THE ERECTION OF ANY STRUCTURE MUST BEGIN WITHIN SIX (6) MONTHS OF THIS BOARD'S MINUTES APPROVAL OR THE VARIANCES GRANTED WILL BECOME NULL OR VOID.

MINUTES APPROVED ON 9-8-2009