

**BEDFORD TOWNSHIP
BOARD OF ZONING APPEALS (BZA)
REGULAR MEETING MINUTES
TUESDAY, SEPTEMBER 8, 2009 OFFICIAL MINUTES**

Present: Korleen Bialecki (Chair), Ron Herr, 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 Leah Bailey (Township Attorney-Lennard, Graham & Goldsmith P.L.C.). Absent (Excused): None.

Call to Order: Ms. Bialecki (Chair) called the September 8, 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 Donald Shinaberry, 1638 Indian Creek Drive, Temperance, MI 48182, requesting a 19.0 ± foot rear yard setback variance (Ordinance 400.1800), for a building addition on a dwelling in an R-2A District (One Family Residential District) on land described as 58-02-230-023-00, Forest View Lot # 23, 1638 Indian Creek Drive.

Ms. Bialecki swore in the applicant/authorized agent (Donald Shinaberry, 1638 Indian Creek Drive) and explained the voting process followed by background information presented by Mr. Tucker. Mr. Shinaberry opted to continue with the variance process. The previously described parcel is approximately .50 ± acre in size while having approximately 257.46 ± feet or “curved road” frontage on Indian Creek Drive, while being identified as Lot # 23 in the Forest View platted subdivision. For the record, the Bedford Township Assessing Department has this dwelling measured at 1,788 square feet. Note, this residential dwelling was built in 1959, well in advance of May 5, 1977, when Bedford Township adopted the zoning ordinances. This lot has a very unusual and unique shape while resembling a corner lot (double front yard set-backs) although Lot #

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23 has a “circular frontage”. Per Bedford Township Ordinance 400.1800, Schedule of Regulations, for an R-2A Zoning District (One Family Residential District) the following is in effect: *“the rear yard construction set-back shall be a minimum of 35 feet”*.

For the record, Bedford Township issued a building permit (PB090128) on June 19, 2009 for an 18’ by 24’ detached accessory building “hot tub room”. Per Bedford Township Accessory Building Ordinance (400.1903) the minimum set-backs of 10 feet from any dwelling and 5 feet from any property line were in compliance for the proposed detached structure. Upon adding an attached covered breezeway to the proposed hot tub house, the R-2A District (One Family Residential District) setbacks were initiated which are more restrictive than the accessory building regulations. For the record, three (3) property owners expressed support for this variance petition. Lot # 21- Mr. James J. Piorkowski-located directly in back of the applicant. Lot # 24- Mr. and Mrs. Gary Gretka-located directly east of the applicant. Lot # 27 and the South ½ of Lot 29- Mr. Robert D. Tominello-located directly across the street from the applicant.

Mr. Kolar stated that the applicant’s proposed construction plan was reviewed within the building department whereby some misunderstanding was made as to whether the proposed construction was detached or attached. Mr. Kolar’s understanding was that this was a detached structure although the applicant wanted to construct an attached breezeway to the accessory building, which greatly changed the set-backs.

Mr. Shinaberry referred to his forwarded letter of rationale and reasoning for the petitioned variance. Mr. Shinaberry further stated that the reasoning for the variance is to have “safe passage” to the therapeutic hot tub from his house in the winter-time. As the letter indicated, previously, almost every bone was broken in his body in an auto accident, whereby it is medically important that he does not slip and fall due to weather conditions. In the event that he fell down, he would have a hard time getting back up. Mr. Shinaberry stated that he could not place the 8’ by 8’ tub in the house due the size of the tub. The actual enclosed breezeway walkway is 15’ long by 4’ wide (completely enclosed) from the dwelling back to the front of the 18’ by 24’ building. Mr. Shinaberry noted that his back yard has a 6’ privacy fence that hides it from the neighbor’s view. The siding is the same on my house so that it aesthetically blends in. In addition, Mr. Shinaberry presented letters from his physician stating that he is totally disabled and can’t drive.

Ms. Bialecki opened the BZA meeting to public commentary.

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

BZA discussion followed. The BZA referred to an aerial photo of the applicant’s lot and other contiguous neighboring lots. Mr. Shinaberry stated that the back lot is angled from 16’ to the east down to 9’ to the west from the building structure. Mr. Herr questioned the placement of the building and enclosed breezeway at this time with the need for a variance to be granted. Mr. Shinaberry indicated that the back of the dwelling is his

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bedroom and it would be most practical/logical (easy accessibility) place to construct the breezeway.

Motion by Mr. Brunt to grant/approve the following variance petition/request: *The Appeal of Donald Shinaberry, 1638 Indian Creek Drive, Temperance, MI 48182, requesting a 19.0 ± foot rear yard setback variance (Ordinance 400.1800), for a building addition on a dwelling in an R-2A District (One Family Residential District) on land described as 58-02-230-023-00, Forest View Lot # 23, 1638 Indian Creek Drive.*

The proposed location of this attached building and enclosed breezeway is not materially injurious to the surrounding properties or otherwise not detrimental to the welfare of the neighboring parcels. The applicant's lot does have the following hardships: the lot has an unusual or irregular shape (circular shaped frontage of lot) and the applicant's health status has been taken into consideration. Four (4) property owners expressed support for this variance petition. 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 applicant shall comply with the Bedford Township Building Official's construction recommendations in attaching this detached structure to the residential dwelling. 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 Bialecki. Voting Nay: Herr. Variance petition is granted/approved.

Second (2nd) Variance Petition

The Appeal of Masserant's Feed and Grain Lambertville LLC, a Michigan Limited Liability Company, 3546 Mill Street, Newport, MI 48166, requesting an "Administrative Zoning Permitted Use Review" variance (Ordinance 400.2204-"Jurisdiction"), in a C-3 District (General Business District) and LVOD (Lambertville Village Overlay District), on land described as 58-02-020-096-00, 8480 Secor Road (formerly "Kayo Lumber Company").

Ms. Bialecki swore in the applicant/authorized agent (David Masserant, 4131 Breast Road, Newport, MI) and explained the voting process followed by background information presented by Mr. Tucker. Mr. Masserant opted to continue with the variance process. The previously described parcel is approximately 2.85 ± acre in size while having approximately 152.47 ± foot frontage on Secor Road and a parcel depth of 709.93 ± feet or approximately 123,423.0 square feet. For the record, the Bedford Township Assessing Department in 1995 created one (1) parcel I.D. number for two (2) parcels that makes up the 2.85 ± acres, whereby this was done for tax purposes only. Note, Parcel II (92' by 165' or .348 ± acre, to the far east), as indicated on the recorded deed 2009R12968, on 7-9-2009, is land locked. 'Masserant Feed and Grain Lambertville, LLC, a Michigan Limited Liability Company' purchased this lot on July 9, 2009 as per the Monroe County Register of Deeds # 2009R12968. For the record, the entire 2.85 ±

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acres were zoned C-3 (General Business District) dating back to May 5, 1977 when the Bedford Township Zoning map was in effect. The variance applicant is seeking a zoning ordinance clarification as to whether within a C-3 (General Business District) zoning district the “refilling of propane cylinders use is permitted”. The following Bedford Township Zoning Ordinance is in effect: ARTICLE XXII--BOARD OF APPEALS, 400.2204 Jurisdictions. *Sec. 2204. 1. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance nor to permit any use in a district in which it is not permitted, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this Section and laws of the State of Michigan. Said powers include:* a. Administer review. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Building Official, Zoning Administrator, Planning Commission or other administrative official or body, whose decision is being appealed, carrying out or enforcing any zoning matter or any provision of this Ordinance. Per Article XIII, C-3 GENERAL BUSINESS DISTRICTS, the following is in effect: *400.1302 Principal uses permitted subject to special approval.*

4. Gasoline service station for the sale of gasoline, oil and minor accessories only, and where no repair work is done, other than incidental service, but not including steam cleaning or undercoating, vehicle body repair, painting, tire recapping, engine rebuilding, auto dismantling, upholstery, auto glass work, and such other activities whose external effects could adversely extend beyond the property line. a. Access to a gasoline service station shall be provided by driveways, which are at least 24 feet wide. Said driveway shall not be located closer than 60 feet to the future right-of-way of any intersecting street or to another curb break or entrance drive on the same side of the street. b. The minimum lot area shall be 22,000 square feet, and the minimum frontage on any street shall be 150 feet, both based upon proposed right-of-way of the Master Plan. Per Article XVI, I-3 GENERAL INDUSTRIAL DISTRICTS, the following is in effect: *400.1601 Principal uses permitted.* 3. Any of the following production or manufacturing uses (not including storage of finished products) provided that they are located not less than 800 feet distant from any Residential District and not less than 300 feet distant from any other district. d. Petroleum or other inflammable liquids, production, refining or storage. For the record, twelve (12) property owners expressed opposition/non-support for this variance petition. Jennifer Allman (3235 Allman Drive); Lisa Paxton (8386 Secor Road); Harold and Debbie Welch (8374 Secor Road); Edward C. Allman (8466 Secor Road); Patricia J. and Ron Bails (8464 Secor Road); Jim Chappellear (8460 Secor Road); Duane Steffens (8481 Secor Road); Linda S. Danford (8481 Secor Road); James and Toni Shake (8462 Secor Road). Read Dennis Jenkin’s (Community Development Director) memo of August 8, 2009 was read for the record.

To: Board of Zoning Appeals

From: Dennis Jenkins

Date: 10/6/2009

Re: Masserant’s Feed & Grain

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As you may be aware Masserant's Feed & Grain has purchased the former Kayo Lumber building on Secor Road. As part of the service offerings of the company Mr. David Masserant would like to offer residential propane tank refilling on premises. These residential tanks would be typical gas grill tanks. This would involve installing a bulk propane tank on site for the filling station. This particular site would meet the fire code as indicated by Chief Bofia.

The issue we are dealing with is that the C-3 General Business district language does not include this specific use. It does allow gasoline service stations as a special approval use in C-3 General Business district. Based on that information Dennis Kolar and I referred Mr. Masserant to the BZA for a review of the language in the C-3 District and a determination as to whether or not this use is similar in nature to a gasoline service station and if so, is special approval required.

Mr. Masserant stated that the refilling of propane tanks on site does fall within the category of gas stations. It was brought to the attention of the BZA that Hackman Farm Supply, Inc. (627 W. Temperance Road) currently refills propane tanks on site. Mr. Masserant stated that they own 3 other facilities that refill propane tanks (big part of business) while being approved, inspected, and regulated by the State Fire Marshall. Mr. Masserant noted that he doesn't believe their proposed propane tank would be much larger (1,800 cubic measure) than Hackman Farm Supply, Inc. so that they wouldn't have trucks constantly in to refill the propane holding tank. Mr. Tucker indicated that the Hackman Farm Supply, Inc. (627 W. Temperance Road) is zoned C-3 (General Business District).

Ms. Bialecki provided a review and explanation of the BZA's responsibility in determining/interpreting the "permitted uses" within the zoning district, specifically the refilling of propane tanks in a C-3 Zoning District. What has been brought forth, which is the closest/similar use, is that of gasoline service stations.

Ms. Bialecki opened the BZA meeting to public commentary.

Mr. James Shake (8462 Secor Road) addressed the BZA on behalf of the 12 individuals that have signed the petition of variance opposition to permit the refilling of propane at 8480 Secor Road. Mr. Shake brought up the May 9, 2007 fire of Reliance Bottle Gas Inc. on Lavoy Road, which also had safety inspections from the State. Mr. Shake stated that the only way to put a propane fire out is to let it burn out, citing information about propane fires, explosions, and injuries. Mr. Shake stated that the request to operate a propane refilling station in the C-3 District, which is in very close proximity to numerous residences, is not in accordance with Article XIII, C-3 (General business District, Section 400.1302). Specifically, the ordinance states that such a variance and/or special permit can not be "detrimental to the safety or convenience of vehicular or pedestrian traffic... and will be consistent in assuring the general public health, safety, and welfare will not

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be infringed upon. Considering the number of residences adjacent to the proposed site and the routine foot traffic presently generated by the existing businesses and surrounding neighborhood, it would not be in the spirit of the Ordinance to grant the variance. In addition, this request is not in accordance with several other sections of Article XIII, nor the Village Overlay District Zoning Ordinance Amendment. In fact, it cannot even meet the specifications outlined in Article XV1 (I-3 General Industrial Districts).

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

BZA discussion followed. Mr. Masserant stated that they have been in the propane refilling business for some 21 years without any accidents or explosions. Mr. Herr stated that it is very clear to him that gasoline stations are a permitted use in a C-3 Zoning District and he sees no wiggle room to expand that beyond for propane refilling services. Further BZA discussion followed regarding Article XVI, I-3 GENERAL INDUSTRIAL DISTRICTS, 400.1601 Principal uses permitted. 3. Any of the following production or manufacturing uses (not including storage of finished products) provided that they are located not less than 800 feet distant from any Residential District and not less than 300 feet distant from any other district. d. Petroleum or other inflammable liquids, production, refining or storage.

Mr. Masserant stated that they are not refining or producing the propane; plans are to just store the propane for refilling purposes. Mr. Pete Settles (11870 Ford Highway, Clinton, MI) addressed the BZA as being the supplier (AmeriGas) of the propane tanks (by leasing). Mr. Settles indicated that on the 1,850 gallon propane tank (22.5' long by 4' wide) there are 2 sets of relief valves. These relief valves are for safety purposes when a fire starts the relief valves activate and don't put any more propane out. Mr. Settles has been in the business since 1978 and only has seen 1 accident. Mr. Settles stated that all propane filling stations are state regulated (NAP58) whereby specific distances are required from building, property lines, etc. for safety purposes. Mr. Settles shared with the BZA the booklet titled "*Propane Fast Facts-A Quick Reference for Suppliers and Users of Propane. AmeriGas*". Mr. Settles reviewed other safety features/practices inclusive of state training (every 6 months) for employees to create a safe situation within residential areas. This is not a self-serve propane filling station and the tanks are above ground. Mr. Masserant indicated that this parcel did not have any underground fuel tanks on site. Mr. Masserant stated that they refill propane tanks (retail operation) at 3 of the 4 store locations, reason being the Newport location has the hardware store close to their grain elevator, thus no need to have a propane filling station because of the close proximity of each. Mr. Masserant stated that propane is a by-product of gasoline and natural gas. Propane is called a "liquefied petroleum gas".

Mr. Herr stated that he doesn't see anywhere in the C-3 Ordinance where there is any reference to "petroleum", the only reference is to "gasoline", whereby it is black and white. Ms Bialecki concurred with Mr. Herr. Mr. Tucker stated that within Bedford Township there are several commercial business that sell the 20 pound propane tank that

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have been filled off site. These propane tanks are interchangeable (drop off an empty tank for a full tank-exchanging).

Much discussion followed by the BZA regarding the I-3 and C-3 Zoning District Ordinance language. Ms Bialecki pointed out that the C-3 Zoning District Ordinance (400.1302 Principal Uses Permitted Subject to Special Approval) “# 4 d.: *There shall be no storage of wrecked or disabled motor vehicles, automotive parts or tires on the premises, except within completely enclosed buildings. Outside above ground tanks for storage of gasoline or any inflammable liquids or gases is prohibited.*” may apply to this variance petition. Ms. Bialecki continued in saying that the BZA is to determine as to whether or not the refilling of propane tanks is similar to gasoline service station use (C-3 Zoning District). Ms. Bialecki noted that the overall activities of each (gasoline service station and propane tank filling) are similar even though the actual product being dispersed is different. Further discussion followed regarding having “retail sales” in an Industrial Zoned District. Ms. Bialecki expressed strong safety concerns of being so close (behind) to a residentially zoned district.

Mr. Herr further added that the task of the BZA is not to determine/interpret the I-3 District Ordinance, we are asked to determine/interpret whether or not, the C-3 District Ordinance permits propane tank refilling. Mr. Herr indicated that he does not see any language in the C-3 District Ordinance that gives the BZA any wiggle room to do that. The Ordinance simply states “gasoline” not “gasoline and other petroleum products”.

Motion by Mr. Herr to deny the following variance petition/request: *The Appeal of Masserant’s Feed and Grain Lambertville LLC, a Michigan Limited Liability Company, 3546 Mill Street, Newport, MI 48166, requesting an “Administrative Zoning Permitted Use Review” variance (Ordinance 400.2204-“Jurisdiction”), in a C-3 District (General Business District) and LVOD (Lambertville Village Overlay District), on land described as 58-02-020-096-00, 8480 Secor Road (formerly “Kayo Lumber Company”).* Reason being that the C-3 Zoning District (General Business District) Ordinance language provides no provision to allow the activity of “refilling of propane tanks” on site. Ms. Hauser-Hurley seconded the motion for discussion purposes.

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

Third (3rd) Variance Petition

The Appeal of Clair L. Kirsch III, 7460 Jackman Road, Temperance, MI 48182, requesting a 13.0-foot front yard front setback variance (Ordinance 400.1800), for a building addition (covered porch) on a dwelling in an R-2A District (One Family Residential District) on land described as 58-02-320-009-00, 7460 Jackman Road.

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Ms. Bialecki swore in the applicant/authorized agent (Clair L. Kirsch III, 7460 Jackman Road) and explained the voting process followed by background information presented by Mr. Tucker. Mr. Kirsch opted to continue with the variance process. The previously described parcel is approximately .34 ± acres in size while having approximately 100.00 ± foot frontage on Jackman Road and lot depth of 150.00 ± feet, while being identified as Lot # 18 in the Hoffman Heights No. 2 platted subdivision. For the record, the Bedford Township Assessing Department has this dwelling measured at 975 square feet. Note, this residential dwelling was built in 1960, well in advance of May 5, 1977, when Bedford Township adopted the zoning ordinances. Per Bedford Township Ordinance 400.1800 Schedule of Regulations for an R-2A Zoning District (One Family Residential District) the following is in effect: *“the minimum front yard construction set-back shall be 90 feet from the center of Jackman Road, or 57’ from the road right of way (33’ from center of road).*

Ms. Bialecki opened the BZA meeting to public commentary.

Mr. Kirsch stated that he is replacing the existing front porch (unclosed) and decreasing the depth by 2’ (6’ depth). Mr. Kirsch indicated that his dwelling faces the West (parallel to Jackman Road) and during the winter, snow, ice, etc. builds up at the front door therefore he can only use the back/garage door. Plans are to place a roof on the front porch (17’ 4” by 6’), which will decrease the elements. Also the ridgeline would be perpendicular to the existing ridge therefore the snow and weather elements would shed off this area.

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

BZA discussion followed. Mr. Kolar expressed support for this proposed construction and the proposed roof structure created the need for a front yard set-back variance. Mr. Herr indicated that per the pictures, the dwelling to the north of Mr. Kirsch dwelling protrudes out farther than Mr. Kirsch’s proposed porch.

Motion by Ms. Hauser-Hurley to grant/approve the following variance petition/request: *The Appeal of Clair L. Kirsch III, 7460 Jackman Road, Temperance, MI 48182, requesting a 13.0-foot front yard front setback variance (Ordinance 400.1800), for a building addition (covered porch) on a dwelling in an R-2A District (One Family Residential District) on land described as 58-02-320-009-00, 7460 Jackman Road.* 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 variance applicant is decreasing the depth of the porch by 2’ and the inability to safely use the front dwelling entrance-way during inclement weather is the practical difficulty. The variance would not be materially injurious to surrounding properties nor does it create a negative impact within the existing neighborhood. Mr. Brunt seconded the motion for discussion purposes.

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

Approval of Minutes: Motion to approve the BZA minutes as revised for August 3, 2009 (regular meeting) made by Ms. Hauser-Hurley and seconded by Mr. Bassinger. Motion carried. The minutes of August 3, 2009 are approved and official as so noted. Mr. Herr abstained from the vote.

Public Comment: None.

Board of Zoning Appeals/Township Representative Comments: The next regular BZA meeting is scheduled for Monday, October 5, 2009 with all materials to be submitted by Monday, September 14, 2009 (noon).

Adjournment: Ms. Bialecki duly adjourned the meeting at approximately 9:05 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 10-5-2009