



CITY OF BURTON

ZONING BOARD OF APPEALS

JULY 15, 2021

Council Chambers

Regular Meeting

5:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by Chairman Steve Welch at 5:06 PM.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Attendee Name	Title	Status	Arrived
Kevin Burge	Planning Representative	Present	
Gary Kautz	Alt. Commissioner	Excused	
Christina Conley	Council Representative	Present	
Scott Hynes	Commissioner	Excused	
Tim Rapacz	Commissioner	Present	
Michaeline Ward-Terry	Vice Chairperson	Present	
Steve Welch	Chairman	Present	
Joey Richvalsky	Alt. Commissioner	Present	
Rick Fuhst	Commissioner	Present	

C. STAFF PRESENT

Duane Haskins, Mayor
Racheal Boggs, City Clerk
Amber Abbey, Deputy DPW Director
Lindsey Bice, Clerk's Office
Leandra Swayne, DPW Records Tech

D. APPROVAL OF MINUTES

1. Zoning Board of Appeals - Regular Meeting - Jun 17, 2021 5:00 PM

RESULT:	ACCEPTED [6 TO 0]
MOVER:	Joey Richvalsky, Alt. Commissioner
SECONDER:	Christina Conley, Council Representative
AYES:	Burge, Conley, Rapacz, Welch, Richvalsky, Fuhst
ABSTAIN:	Ward-Terry
EXCUSED:	Kautz, Hynes

E. VARIANCE

1. ZBA #21-14
By: Genova USA 1760 W. Associates Ave. Salt Lake, Utah 84104

Re: 5490 Davison Rd. Burton MI, Parcel 59-11-200-005, Zoned C-2

- For:
- 1.To conduct an M-1 light industrial use in a C-2 general business zone for wholesale.
 - 2.To conduct an M-2 special use in a C-2 general business zone for an open storage yard.

Brandy Smith of 5490 Davison Road, Burton, MI stated she has nothing to add.

Mrs. Abbey stated the only access is off Davison Road, there is no access off Belsay Road. This business began to move in back in April, without any approvals and did not contact the city. We saw workers on their roof, went to the property, told them they had to follow proper procedures and they came right in. I asked them what type of business it was, they told me it was an office. I informed them that industrial use, wholesale product storage would not be allowed at this property because it is zoned C-2 general business. I was again told, this is office only. Building permits have not been issued, fire approval has not been given, the parking lot was ripped out without approval and no plan in place. They were told they had to submit a plan in June, no plan was submitted and the parking lot started to go up last Friday. Our building official stopped there to give them a stop work order, but the owner's representative refused to let them on the property. We contacted the Police Department and had them assist as a stop work order was issued. The comment made, as you can see on the officer's report, was that they would pay any fines and they were going to keep working anyway. They refused to stop working as ordered and as of this Monday, the parking lot was paved. We have no idea what drainage system was put in or if it was appropriate for the size of the property. To date they do not have a building permit or a fire approval. They do not have temporary occupancy or an approval for the parking lot. Additionally, there has been a complete disregard for the process and misconceptions about what the project is from the beginning and continued over the last two months. The City has gone above and beyond to work with the project representative. They have not provided any plan for the outside storage area, as I suggested to them prior to application. If the board made action tonight, it would have to be solely on their word or any stipulations applied to the action, and they have shown a contempt for any requirements from the City thus far. If we have struggled to get the owner to get the proper permits and follow procedures, why should we agree to an exception from our ordinance and issue these variances? The administration would recommend that the ZBA postpone their action until the next meeting or until the applicant can get proper permits for the construction that comply with the building and fire departments requests. The parking lot as-built plans must be submitted and drainage approved by the Genesee County Drain Commission to ensure capacity on the system. Provide copies of the recorded easements for the driveways on parcel 59-11-200-006 and 59-11-200-011 which are the driveways off Belsay Road on other properties. And provide this board with a plan for the location of the outside storage, including materials stacking height and height/material of any screening or any other items the board seems necessary.

Mr. Burge asked if this is delayed, can we get in there to check the drains to prevent flooding to the next business down.

Mrs. Abbey stated that is the requirement of the as-built. It will tell us what they have already done. Short of making them rip it out, get it approved and reinstall it. The as-built will show us if the capacity is appropriate.

Mr. Rapacz asked the applicant what they do not like about the process.

Ms. Smith stated she is not the representative that they have been dealing with. I do not know what their issue with the process is and I have no objection with postponing it until the necessary plans are submitted.

Mr. Rapacz asked if she had any rebuttal toward the comments made about not being allowed to see the site.

Ms. Smith stated we do not have a business license yet so I am not on the property when these actions take place.

Mr. Rapacz asked, if we deny this, what would happen?

Mrs. Abbey stated they would have to reapply.

Mr. Rapacz asked, so they can just do whatever they want without any repercussions?

Mrs. Abbey said, no. We will take further court action.

Mr. Richvalsky asked if it would be appropriate to make a motion at this time. I would like to make a motion that we table this until next month. Possibly, by that time, the administration would have time to get with the owners and process a little bit further on what they need. We need a site plan. Shouldn't this go to the Planning Commission?

Mrs. Abbey stated they need a variance first before they can submit any kind of site plan. The use has to be approved to be there before a site plan can be approved by the Planning Commission.

Mr. Richvalsky stated I have been in front of this board before with the property next door to mine, I had a site plan in hand and presented it to get the variance. Why is this different?

Mrs. Abbey stated it is not. I told the applicant to provide that to you. They chose not to.

Mr. Richvalsky stated the simplest thing is the site plan. It doesn't have to be professionally done but what we have here could have been done by my grandson.

Mrs. Abbey stated I think you need to defer that to the owner. That is exactly what I said.

Mr. Welch stated we can make a motion to approve or deny and put contingencies on it. I would suggest the maker of the motion postpone this to the next ZBA meeting, at the earliest.

Mr. Rapacz asked, what happens when they come back in a month and still do not care for the process? They have already had a month at this point and disregarded the process.

Discussion ensued regarding whether or not the board wants to postpone or deny this variance request.

Mr. Richvalsky motioned that we table ZBA case #21-14 until the next meeting when the applicant can supply the board with more information.

Mrs. Ward-Terry stated I request that we add the addendum, since they are non-compliant, that within 30 days they have to comply with the stop work order, postpone until the applicants permits and as-built plan for drainage is done, copies for the easements, plans for material stacking height and any other issues such as landscaping. These stipulations need to be included in the postponement.

Mrs. Abbey stated I would ask that you do not add the stop work order. The city will pursue legal action regarding their decision to ignore that part. I want them to get their proper permits to comply with their construction for the building and fire department.

Mrs. Ward-Terry stated you still want the permits and the as-built plan.

Mrs. Abbey said, yes, absolutely.

Mr. Welch asked to make it simple, what are your bullet points?

Mrs. Abbey stated to get proper permits for the construction that comply with the building and fire departments requests. The parking lot as-built plans must be submitted and drainage approved by the Genesee County Drain Commission to ensure capacity on the system. Copies of the recorded easements for the driveways on parcel 59-11-200-006 and 59-11-200-011 which are the driveways off Belsay Road on other properties. Provide this board with a plan for the location of the outside storage, including materials stacking height and height/material of any screening or any other items the board seems necessary.

Mr. Richvalsky stated I add that to my motion.

Discussion ensued regarding why the owners representative is not present at the meeting.

Motion to table ZBA Case #21-14 to the next meeting when the applicant can supply the board with proper permits for the construction that comply with the building and fire departments requests. The parking lot as-built plans must be submitted and drainage approved by the Genesee County Drain Commission to ensure capacity on the system. Copies of the recorded easements for the driveways on parcel 59-11-200-006 and 59-11-200-011 which are the driveways off Belsay Road on other properties. Provide this board with a plan for the location of the outside storage, including materials stacking height and height/material of any screening or any other items the board seems necessary.

RESULT:	CARRIED [6 TO 1]
MOVER:	Joey Richvalsky, Alt. Commissioner
SECONDER:	Rick Fuhst, Commissioner
AYES:	Burge, Conley, Ward-Terry, Welch, Richvalsky, Fuhst
NAYS:	Rapacz
EXCUSED:	Kautz, Hynes

2. ZBA #21-15

By: Michael Zimmerman 7421 Lions Gate Pkwy. Davison, MI 48423

Re: 4406 Kestrel Ln, Parcel 59-27-200-015, Zoned R-1B

For: To construct a front yard chain link fence exceeding allowed 4 feet in height, requesting 6 feet in height.

Michael Zimmerman of 7421 Lions Gate Pkwy., Davison stated he sent an email highlighting a couple points regarding his case.

Connie Morin of 4430 Eagle Lane, Burton stated she moved to Eagle Lane ten years ago. They have cleaned up the applicant's property at the end of Eagle Lane, clearing out brush, cement and mowing it every week. The property was previously owned by someone who lived out of state. It was not maintained and used as a dump site.

Steve Morin of 4430 Eagle Lane, Burton stated his six-foot fence for his front yard will be in my backyard. When I stand on my deck and look at my backyard, the property rises, making this a seven to eight-foot fence. What is the ordinance on how tall the grass is allowed to be in his front yard? The brush right now is four feet high. If it was a solid fence it would be like a grudge fence. I don't want a fence in my backyard, I enjoy seeing nature.

Mrs. Morin continued to express concern regarding the fence and trees that grow in the fence line.

Joseph Eans at 4368 Kestrel Lane stated he supports Mr. Zimmerman adding this fence on his property. When you purchase undeveloped land and invest in it, you should be able to protect that investment.

Mr. Welch read the following letters into the record:

- Mike Zimmerman, the applicant, stating why he is requesting this variance.
- James & Kellie Lavallier at Eagle Lane in Burton against the variance because our ordinances are in place for a reason and this type of fence would be an eyesore.

Laurie Hartzler at 4398 Kestrel Lane, Burton stated after living on Kestrel Lane for 17 years and watching what goes on, on that property she supports Mr. Zimmerman being allowed to build a fence.

Mrs. Abbey stated in Mr. Zimmerman's back-up, he provided an aerial view of the property. The house he intends to build is right in the middle of the ten acres. This is a front yard for him, it meets the uniqueness of the property based on where the house is going to be located. This would typically be the backyard for the people on Eagle Lane and the backyard or side yard for the people on Kestrel. For Mr. Zimmerman, it is his front yard. His email was incorrect in stating they would be allowed a six-foot-high chain link fence. They would be allowed to have a six-foot-high privacy fence. We are not okay recommending approval on a six-foot chain-link fence, those are only to be around industrial facilities or utility type uses. We would recommend approval on a privacy type fence, which would be wood or vinyl material. I would like to add the stipulation that they can only put it where it is someone's back or side yard.

Mrs. Ward-Terry clarified the applicant is allowed to put a four-foot fence where he would like, we are approving a variance for the additional two feet, correct?

Mrs. Abbey said, yes. He is also requesting for it to be chain link, so that will need to be addressed as well. If he requested a four-foot-high chain link fence, we would still have to notify the adjoining property owners and they would still have a right to object. At that point, he would come before you. If you were okay with the fence

being four feet, I would suggest putting that in your approval so they do not have to re-notify and possibly come back.

Mr. Rapacz stated from the drawing provided, it appears you are only placing the fence in one certain section. Why do you only need the fence in this section?

Mr. Zimmerman stated this seems to be the area where most of the problems are coming from.

Mr. Rapacz asked, are the problems are coming from someone's backyard onto your property?

Mr. Zimmerman stated, correct. It is way more than twelve feet.

Mr. Rapacz asked how long the fence would be and would you have a problem with it being wood or vinyl?

Mr. Zimmerman stated about 285 feet. That would be a big cost increase for me.

Discussion ensued regarding property access point, the effectiveness of types of fences, and the process of approving with a four-foot fence or denying this variance.

Mr. Rapacz motioned to approve ZBA case #21-15 under the stipulation that it can be no more than a six-foot wood or vinyl fence that is only applicable along a resident's backyard or side yard or a four-foot chain link fence.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Tim Rapacz, Commissioner
SECONDER:	Joey Richvalsky, Alt. Commissioner
AYES:	Burge, Conley, Rapacz, Ward-Terry, Welch, Richvalsky, Fuhst
EXCUSED:	Kautz, Hynes

3. ZBA #21-16

By: Tina Wooley 8457 Jordan Rd. Grand Blanc, MI 48439

Re: 5350 Davison Rd. Burton MI, Parcel 59-11-200-011, Zoned C-2

For: To host an Art Festival on Collette's Vintage property from July 31st to August 1st, 2021.

Tina Wooley at 8457 Jordan Road, Grand Blanc stated she submitted quite a bit of information but is available for any questions.

Anne Hall at 6073 Ridge Street, Davison stated she is the office manager at Collette's Vintage. They fully support hosting this festival.

Mr. Welch read the following letter into the record:

- Julie Peck at 1434 N. Belsay Road, Burton stating no opposition to the art festival.

Mrs. Abbey stated Collette's Vintage has been there for a few years now. They have been very successful in hosting any events they have held. We have never had an art festival in the city, so it would be interesting to see the success of that. We would recommend approval. I would like to remind the board that for events and festivals,

if you approve them tonight and they are successful, they can apply and get approved administratively for up to five years unless there was an issue that caused me to reach out to the board.

Mr. Burge asked if this is a huge success, where would the overflow parking go?

Mrs. Abbey stated I do not anticipate that as an issue. That parking lot and land is very large.

Mr. Richvalsky asked what type of art will be displayed.

Mrs. Wooley stated she is grass roots. We look for local artists who are just starting out and give them a platform. There are over 160 available parking spots. I would not expect a flow of more than 25 to 30 people per hour.

Mrs. Ward-Terry motioned to approve ZBA Case #21-16.

Mr. Rapacz asked if the time of the festival will only be from 11AM-7PM. Is that important for us to add in the motion?

Mrs. Abbey stated if you feel it is important, you can add it to the motion. That way when they come back next year, they can't go later.

Mrs. Ward-Terry stated I will add 11AM-7PM to the motion and we can re-examine it if you so choose to.

Motion to approve ZBA Case #21-16 to host an Art Festival on Collette's Vintage property from July 31st to August 1st, 2021 with the stipulation that it can only be held from 11AM until 7PM.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Michaeline Ward-Terry, Vice Chairperson
SECONDER:	Christina Conley, Council Representative
AYES:	Burge, Conley, Rapacz, Ward-Terry, Welch, Richvalsky, Fuhst
EXCUSED:	Kautz, Hynes

4. ZBA #21-17

By: Syko Gardens LLC 3309 Associates Dr. Burton, MI

Re: 3327 Associates Dr., Parcel 59-29-551-022
3333 Associates Dr., Parcel 59-21-551-004
And Vacant Parcel 59-29-551-006 on Associates Dr. Burton MI, Zoned M-1

For: To conduct a marijuana facility within 500 feet of an existing facility.

Christopher Ebbott at 221 W. Flint Street, Flint stated he is here on behalf of Syko Gardens, LLC. There are numerous parcels on Associates Drive. A variance has been approved at 3309 and 3323 to be within 500 feet of the facility that is at the end of the road. My clients own the properties between them. What they want to do with the variance you have already granted them is improve these properties. We are not asking for a new license, they want to improve and build onto the buildings that are there.

Mr. Richvalsky asked if all the buildings are continuous.

Mr. Ebbot stated, yes, they are continuous. They own from 3309, where there is already a variance, to the empty parking lot which is 006. Then there is another business and from what I have seen, it does not appear anyone has objected to this variance. They want to fix it all up and make it a part of their business. It is not going to affect the public in any way or increase the hazard of fire or flood. They have the dispensary open in the first one so this would be more of a grow operation which would not increase traffic on the road. It would increase the tax space. There are no negatives unless they wouldn't be permitted to use these buildings with their variance, they would then sit empty. This is not another marijuana business, they are just growing the one that they have.

Mr. Welch read the following letter into the record:

- Scott Smith at 3364 Associates Drive, Burton regarding his previous zoning case and opinion on the board showing favoritism to different property owners.

Mrs. Abbey stated my only recommendation is if you approve this, add the stipulation that they combine all the parcels together with parcel ID 59-29-551-028. Which is the main building that has the approval right now.

Mr. Richvalsky asked if this is the same applicant that was going to build the three-story building and combine the properties, improving the area. Is that still on the table or will you just be using the existing buildings?

Mr. Ebbott stated the plan is to combine them all. First, they have to get the water line in. The goal would be to have a new build on all the properties.

Mr. Rapacz asked what building they are waiting on the water line approval for.

Mrs. Abbey stated the building that already has the license. A water main is going between the two existing buildings, from what I have seen.

Mr. Rapacz asked the applicant what their immediate plans would be if we were to combine all the parcels.

Mr. Ebbott stated after the water line approval, the first thing would be to get the site approval for additional buildings. The next thing after that would be demolishing some of the buildings, improving the parking lot and starting on new builds.

Discussion ensued regarding the buildings that are currently on the property and what they are used for.

Matt Ovadek of Syko Gardens, LLC stated we have been trying to develop the property that we have the variance on. The first thing we did was the dispensary, which will probably be open in the next couple of weeks. The next issue we are having is the blue building and the back-cement building with putting our water line in through the county. Once that is done, on the back-cement building, there will be a three story, 35 feet addition connecting that one. Once that is complete, we will move on to the rest of the properties if we get the approval.

Mr. Rapacz stated I think we are deciding tonight whether or not to combine all the parcels with the main parcel.

Mrs. Abbey said, no. What you are deciding is whether or not to allow him to expand

onto those other properties. His approval is already done on the north parcel. You are deciding whether or not he will be allowed to expand onto 022, 004 and 006. I am requesting a stipulation that if you approve this, he will be required to combine all of them with the main parcel that already has approval which is 028.

Mr. Richvalsky motioned to approve ZBA case #21-17 with the stipulations laid out by the administration that they combine all the parcels.

Mr. Welch clarified the motion is to combine all parcels with parcel number 59-29-551-028.

Mr. Rapacz asked, how is it advantageous for the city to combine these all into one parcel?

Mrs. Abbey stated if you don't, then they can have three separate licenses.

Mr. Rapacz stated that makes it so the one license is for the entire property.

Mrs. Abbey said, correct. They can collocate different uses but the licensee has to be the same. This way, they cannot lease off different parts of their property to someone else to be able to operate separate, individual facilities.

Motion to approve ZBA Case #21-17 with the stipulation that parcel numbers 59-29-551-006, 59-29-551-004, and 59-29-551-022 be combined with parcel number 59-29-551-028.

RESULT:	CARRIED [6 TO 1]
MOVER:	Joey Richvalsky, Alt. Commissioner
SECONDER:	Christina Conley, Council Representative
AYES:	Burge, Conley, Rapacz, Welch, Richvalsky, Fuhst
NAYS:	Ward-Terry
EXCUSED:	Kautz, Hynes

5. ZBA #21-18

By: Shane and Tracy Moore 719 W. Flint St. Davison, MI

Re: 1235 S Center Rd. Burton MI, Parcel 59-15-100-015, Zoned C-4

For: To conduct a C-3 special use in a C-4 planned shopping center district zone, for an indoor recreational use.

Shane Moore of 719 W. Flint Street, Davison added that this will be an indoor recreational and entertainment facility

Mrs. Abbey stated she provided the board with information provided by the applicants that was not able to go out in their board packet. One of the issues that came up was parking. I believe the applicant has proved they have adequate parking there for the type of use they plan to do. We are excited to see something like this come to the City of Burton. We would recommend approval.

Mr. Richvalsky asked the applicants if they are operating a business now.

Mr. Moore stated they currently own Spy Maker Escape Rooms located on Miller Road. Half of what we are planning to lease will be dedicated to axe throwing and virtual reality and the other half will be for relocating our current business.

Mr. Richvalsky asked, for the purposes of parking, how long do you have patrons in your facility?

Mr. Moore stated we generally tell our guests to plan for an hour and a half.

Discussion ensued regarding what axe throwing entails, the safety procedures and guidelines in place, and success of axe throwing facilities.

Mr. Rapacz motioned to approve ZBA Case #21-18 to conduct a C-3 special use in a C-4 planned shopping center district zone, for an indoor recreational use.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Tim Rapacz, Commissioner
SECONDER:	Michaeline Ward-Terry, Vice Chairperson
AYES:	Burge, Conley, Rapacz, Ward-Terry, Welch, Richvalsky, Fuhst
EXCUSED:	Kautz, Hynes

F. AUDIENCE PARTICIPATION

No audience participation.

G. BOARD DISCUSSION

No board discussion.

The next regularly scheduled meeting will be held on Thursday, August 19, 2021, at 5:00 p.m.
