



CITY OF BURTON

ZONING BOARD OF APPEALS

SEPTEMBER 16, 2021

Council Chambers

Regular Meeting

5:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by Chairman Steve Welch at 5:00 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	Present	
Tim Rapacz	Commissioner	Present	
Michaeline Ward-Terry	Vice Chairperson	Excused	
Steve Welch	Chairman	Present	
Joey Richvalsky	Alt. Commissioner	Present	
Rick Fuhst	Commissioner	Present	

C. STAFF PRESENT

Amber Abbey, Deputy DPW Director
Lindsey Bice, Clerk's Office

D. APPROVAL OF MINUTES

1. Zoning Board of Appeals - Regular Meeting - Aug 19, 2021 5:00 PM

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

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.

Mrs. Abbey stated I have not received the items that warranted the previous postponement. I have not heard from them. Our recommendations would be to continue to postpone until they can provide the documentation that you have requested.

Mr. Richvalsky asked if the applicant's have proceeded to do the work that they were doing all along.

Mrs. Abbey stated the building permit has been issued. They are working on the interior of the building but the site work has not continued.

Mr. Burge asked if the plans regarding the parking lot have been provided.

Mrs. Abbey said, no. That is what they are waiting on from their engineer. I did not call them today, however, it is not my job to babysit. If they wanted their case heard, they would be here with the plans. If not, we continue to postpone.

Discussion ensued regarding how many postponements a case can have and that the administration recommends continuing to postpone with a certain date to prevent having to resend out notifications.

Mr. Rapacz asked what would happen if they finish with their building permit and begin their operation without ever getting back to us? They have shown they do not care what we decide one way or another.

Mrs. Abbey stated I think they do care. I think they do not have the documentation that they need to provide to you to have their case heard. It was either a delay from their engineer or a bigger project than they had anticipated to be able to get those items together. I can only guess. I think they know we are serious, I don't think they would occupy without our approval.

Mr. Fuhst motioned to postpone ZBA case #21-14 until the October 21, 2021 meeting at 5:00PM.

Mrs. Abbey stated she will send the applicants a letter that this will be the last postponement and action needs to happen at the next meeting.

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

2. ZBA #21-19

By: Sweety Ajah Srivastava 3020 S. Genesee Rd. Burton, MI 48519

Re: 3020 S. Genesee Rd. Burton, MI 48519
Parcel 59-27-526-032, Zoned RO

For: To allow an alternative to the requirement of a screened fence between

residential and RO Zone. (157.087)

Sweetie Srivastava at 3020 S. Genesee Road stated I took over this practice at the beginning of this year. The previous owners did not state anything regarding a fence so I was surprised when I received the letter in July. As far as the ditch, I was unclear if that was within my property limits. I am aware now and it is taken care of. We are a pediatric clinic, yes we are a commercial property but it is not a high traffic zone. Our business hours are from 9AM-5PM and we have 2-3 cars in our parking lot at any given time. There has been no change in the ground site over the last 20 years so the need for a fence is a little unclear to me. The previous owners had a wood fence that lasted one year. My quote on a wood fence was \$20,000. I am just starting out and that is a huge expense to bear.

Cindy Grawburg-Duff at 3040 S. Genesee Road stated it is an ordinance that a fence has to be between a residence and a commercial building, I don't see any reason that she can't put that back up. There is a ditch there that needs to be taken care of on her property.

Steve Neirink at 3014 S. Genesee Road stated I share ownership of the lot. I have been there for 18 years. I think it would be okay if there was something that acted as a divider. As far as a fence, we would have to figure out how far out you would want it to go and how much of an eyesore it would be for anyone traveling down Genesee Road. We need a time frame and an idea of what kind of fence it has to be. There is the idea of a natural fence, a staggered tree line that would look a lot better. Photos were presented to the board. Aesthetically, the idea of having a fence just to have a fence because it is an ordinance does not make sense to me. Taking care of it, the upkeep and making it look good, makes sense to me. We can discuss with our neighbor the removal of weeds from the ditch line. I have been there 18 years without complaints because we keep it looking nice.

Mrs. Abbey stated in March of 2001, the Planning Commission approved a Site Plan which included a fence along the west and south property lines. The fence was installed and had been up for many years. I cannot tell you when it was removed. We received a complaint in July of 2021 regarding the fact that there was not a fence there. The ordinance requires a privacy protection between a commercial building and residential home. We do not get to decide whose intent that was, why they decided to do that or if it makes sense. You get to decide whether or not you feel the fence is necessary. We also understand that we like to have alternatives to fences. If they can provide some type of protection that covers the intent of the ordinance without necessarily being a fence, then I think you could accept that as well.

Mr. Welch asked for clarification on the specific type of fence.

Mrs. Abbey stated it says a six-foot high wood fence.

Mr. Hynes stated I have lived there 20 years and that property has always been well maintained.

Mr. Rapacz asked how long the previous fence had been up and when the complaint came in.

Mrs. Abbey stated the original fence went up in 2001, I do not know how long it was up for. The complaint came in July of 2021.

Mr. Neirink stated the fence was not up very long. The property has a bit of a nature preserve area bordering it where the fence was at the time. The fence never came out to the road and would look horrible if it did. I do not believe our neighbors to the west are interested in the fence and already have their own chain link fence. I believe there is a reason the fence was not there very long.

Mr. Rapacz asked if the person who made the complaint received notice of the meeting.

Mrs. Abbey stated everyone within 300 feet received notice.

Mr. Rapacz stated we are going to assume they live within 300 feet if they are making the complaint. I drive by that property everyday and have not seen a fence in the last 5 years.

Discussion ensued regarding where the fence would be located on the property and alternate options such as a tree line instead of a fence.

Mr. Richvalsky motioned to allow an alternative to the requirement of a screened fence between residential and RO Zone. My logic is that the RO Zoning embraces that and looks great the way it is. My motion is to accept it as written and leave it alone, let the applicants continue to maintain the property as they currently are.

Mr. Welch stated I would suggest that we be more specific.

RESULT:	CARRIED [4 TO 3]
MOVER:	Joey Richvalsky, Alt. Commissioner
SECONDER:	Kevin Burge, Planning Representative
AYES:	Burge, Conley, Richvalsky, Fuhst
NAYS:	Hynes, Rapacz, Welch
EXCUSED:	Kautz, Ward-Terry

3. ZBA #21-22

By: 4463 S. Dort Hwy LLC
6160 Dixie Hwy., Suite 205, Clarkston, MI 48346

Re: 4463 S. Dort Hwy., Burton Mi
Parcel 59-33-300-022, Zoned M-1

For: To conduct a marijuana facility on a zoned and approved parcel with another use not associated with a co-location.

Jeff McGee at 4463 S. Dort Highway stated I believe the ordinance was written for new structures, where it made a lot of sense to do that. We have the unique opportunity to take the old building and expand our footprint.

Bruce Leach at 6308 Rolling Green Drive, Grand Blanc stated he is a partner in this business with Mr. McGee. I am here to support this request for a variance. Century Rolls is an industrial tenant. They do not have any commercial foot traffic. The operation of the cannabis business would have no impact on that particular business. We would like to maintain these tenants in the building and not force them out to a different location with the inability to operate. We have plans to redo the parking lot and add landscaping as well.

Mr. Welch read into the record public comment submitted by Soroc Products against the variance.

Mrs. Abbey stated they are not asking to do the marijuana facility there, they already have that approval. They are asking that the existing business continue to be able to occupy. When we did the ordinance, the intent was that we did not have multi-tenant spaces so that we did not have the risk of children entering these facilities. This particular tenant, Century Roll, does not have retail space, nor do they hire anyone under the age of 18 that would cause an intent problem here. The intent of the ordinance can still be met and allow the current resident to stay. I would make the stipulation that we make it for this current tenant and we do not open it up for anyone that comes in to occupy.

Mr. Richvalsky asked, how many buildings are on this property? If the tenant changes, would they have to come to the administration to get an occupancy permit?

Mrs. Abbey stated there are two buildings and yes, they would.

Mr. Hynes expressed concerns regarding the constant diluting of the 500 foot requirement and the fear of losing the intent of the ordinance.

Mr. Rapacz asked Mrs. Abbey about a request he had made for her to check in with the Police Department to retrieve information regarding how many calls they receive about disturbances at marijuana facilities.

Mrs. Abbey stated I received this request from you yesterday. I spoke with the Police Chief. He informed me that I would have to get him every address that has a facility, they would then provide that to 911 who would provide the information back to us. The Police Department would then have to check over each report. It is a time consuming process and would take longer to get you that answer. The Police Chief did inform me that he does not have many police issues at these facilities.

Mr. Fuhst clarified that there is already a marijuana license at this location, basically we are deciding that the other tenant may remain at this location as well.

Mrs. Abbey stated, correct. They have a license at that particular property, it is in the back building. There was not a tenant in that building so the license was able to be issued. In order to have another license on the property at the front building, the occupant would have to go. So they are not currently violating the ordinance because the back building is a free standing building.

Mr. Rapacz motioned to approve ZBA case #21-22 with the added stipulation that this only applies to Century Roll.

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

4. ZBA #21-23

By: Adam Karas

1409 E. Williamson, Burton, MI

Re: 1409 E. Williamson, Burton, MI
Parcel 59-31-527-109, Zoned R-1C

For: To construct a front yard fence that an objection was received by an adjoining property owner.

Adam Karas 1409 E. Williamson Street stated I put a fence up and received an objection to it. I had received a permit for the backyard fence, I didn't realize I needed one for the front yard fence as well. I adhered to all the guidelines putting up the fence except getting the neighbors approval. I have three dogs and I wanted to secure the dogs on my property. The fence was already finished on one side, I continued finishing it on the other side to connect it. There had been a previous fence there, that is why I thought it was okay. The neighbors who complained actually helped me start the construction.

Mr. Welch read into the record public comment submitted by Linda Brow expressing disagreement with this variance.

Mrs. Abbey stated in July 2021, the city received a complaint about a fence being installed without a permit. We went to the property and informed the applicant that he needs to have a permit, he applied right away. We sent out notice to the adjoining properties and received an objection. The fence is already installed but do not let that be part of your decision. The difference here is that we have 40 or 50x100 lots. The houses are all built on top of each other. I can see both sides of it, so I will leave this one up to the board.

Mr. Burge asked for clarification on which neighbor submitted a complaint.

Discussion ensued regarding setback requirements, where the fence is located, the possibility of moving the fence over one foot and this being a common fence in this area.

Mr. Welch asked the applicant if he is cordial with the neighbors.

Mr. Karas stated he was cordial with them. The son of the couple that lives there helped him take the trees down to put up the fence and they split the wood from that. He helped him set the fence posts for the front yard fence and those were in place for a few days. They never once approached me in that time. They waited until I had the fence up and cemented all the posts in. I am good enough friends with them that they could have come and talked to me about it first.

Mr. Welch stated I imagine it would be a lot of work to move it over. Either that or tear it down.

Mr. Burge asked the administration the width of parking spaces.

Mrs. Abbey stated 9 feet.

Mr. Burge stated the driveway looks like it is at least 9 feet.

Mr. Rapacz motioned to approve ZBA case #21-23 as written.

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

5. ZBA #21-24

By: Kenneth Boutillier
3231 S. Dort Hwy., Burton, MI

Re: 3231 S. Dort Hwy., Burton, MI
Parcel 59-28-501-166, Zoned C-2

For: To reinstate a non-conforming use as a residential home in a C-2 General Business zone.

Kenneth Boutillier 3231 S. Dort Highway stated he is here today applying for the continued use of a residential house located in a C-2 zoning district. I was notified the home was on a demolition list one month after I purchased it. I ordered and completed a building inspection at that point. The building was found to be secure, the roof was water tight, and there was nothing major that would stop occupancy. We were given a list of external repairs that needed to be completed, most of which have been except the few waiting for unresolved permits. After a call from the building inspector, the Zoning Administrator imposed Ordinance 157.321, citing vacancy over six months and immediately changing the use of this to commercial which did not allow me to occupy the home. The property has been used as a house since 1940. I own the neighboring corner business, Top Line Auto. We have made extensive progress on cleaning the property up. Local businesses have submitted their support for allowing the non-conforming use of this property.

Timothy Wagner G-3223 S. Dort Highway stated he would feel safer with someone living in that home and the applicant has done extensive cleaning on the property to improve the neighborhood. He supports this variance.

Mr. Welch read into the record public comment submitted by John D. Hall and Michael L. Leitch, Raidan Sobh at G-3211 S. Dort Highway, Brian Zaremba at 3033 E. Hemphill Road, Richard Yaklin at 3236 Myrton Street, and Vaseli Dedvukovic all citing support of the applicant and this variance.

Mrs. Abbey stated this property was owned by the Genesee County Treasurer's Office and sold in 2015 for \$1,500. After that, the city had tagged the house as unoccupied in 2018. Shortly after, it was discovered that Trisha Hoss was occupying the home. She was a nightmare in that house. When the city found the house was being occupied without any approvals or inspections, the inspector at the time did feel sympathy towards the person occupying the home and issued them a temporary occupancy to occupy the home only. Since then and up until 2019, the city had five code enforcement violations at that property regarding issues with the tenant. Once the property was vacant again, the city took the opportunity to tag it again because she had done damage to the property. The house was tagged on January 1, 2020. At that time, we sent a demolition letter to the property owner, Mr. Dedvukovic, to demo the home and the commercial building attached. January 31, 2020, we sent the demolition letter. March of 2021 we received a call from the previous owner informing us that the property had been sold but the new owners knew it had been

tagged and needed to be inspected. In March of 2020 the city had shut down and we did not proceed with demolitions because we could not hold public hearings. Once virtual meetings ended, we revisited our demolition list and began to hold those hearings. We sent out the demolition letters again. We sent out the letters in July of this year, not knowing Mr. Boutillier was the new owner. Any time we have the opportunity to remove a non-conforming use, we take that opportunity. When the change of ownership happened, no one came to our office to change the business use. We made the decision, now it is up to you whether or not you want to reinstate it. I have seen his businesses, he has done a great job. I am comfortable to know that if you did reinstate the non-conforming use, he probably would do a great job in fixing it up. Where it goes from there is unknown.

Mr. Richvalsky asked, if the non-conforming use is reinstated, would there be stipulations that only Mr. Boutillier can live there or can it be rented out?

Mrs. Abbey stated I would ask that you do not put those stipulations because that would be impossible to enforce.

Mr. Burge asked the applicant how long he has lived at the home and what repairs he has done since taking ownership.

Mr. Boutillier stated he has owned the home for three months. He has done extensive improvements on the exterior.

Discussion ensued regarding the applicant living at this property as his primary residence, not putting stipulations on who can live at the property, and Property Transfer Affidavits.

Mr. Hynes motioned to approve ZBA case #21-24 as written.

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

6. ZBA #21-25

By: Rene L. Gray
4386 Brunswick Dr., Burton, MI

Re: 4386 Brunswick Dr., Burton, MI
Parcel 59-31-300-012, Zoned R-1B

For: To construct 6' privacy fence in a front yard.

Rene Gray at 4386 Brunswick Drive stated one area of my driveway, there are large dips on the side. I am requesting a six-foot fence there because a four-foot fence would not give me much privacy. My property is unique in that the entire driveway headed north to property ending in 018 is considered my front yard. I have owned this property since January of 1993.

Mr. Welch read into the record public comment submitted by Steve Young at 4352 Fairwood Drive stating he is against this variance.

Mrs. Abbey stated I would like you to take a look at the map that was provided. This property is what the Zoning Board of Appeals is here for. Long ago, Mrs. Gray was allowed to put a house on this very odd shaped parcel which includes a private drive going back to it. Given the parcel and the way her house sits, the location of the fence is in her front yard. Her property borders a subdivision. All of the subdivision lots that border her property, their backyard is her front yard. If everyone of those properties wanted to put a six-foot high privacy fence on the back of their property, they could with no right to object. What she is doing does not violate the intent of the ordinance. The ordinance is to keep privacy fences out of front yards in subdivisions, like the public comment mentioned. I would like to add, that comment did not come from one of the adjoining properties. We recommend approval.

Mr. Hynes motioned to approve ZBA case #21-25 as written.

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

F. AUDIENCE PARTICIPATION

No audience participation.

G. BOARD DISCUSSION

Mr. Burge stated he received training information from ROWE and would like to pass that along to the Zoning Board of Appeals so everyone could attend.

The next regularly scheduled meeting will be held on Thursday, October 21, 2021, at 5:00 p.m.
