

CITY OF BURTON
REGULAR ZONING BOARD OF APPEALS MEETING MINUTES
JANUARY 17, 2002, 6:00 P.M., COUNCIL CHAMBERS

THE MEETING WAS CALLED TO ORDER BY WILLIAM KALANQUIN AT 6:00 P.M.

MEMBERS PRESENT: Scott, Welch, Centilli, Grantner, Curtis, Kalanquin

MEMBERS ABSENT: None

OTHERS PRESENT: R. Austin, Attorney, J. Major, DPW Director, T. Strasser, Deputy Planning Official,
J. Adams, Clerk's Office

Moved by Grantner, seconded by Scott to approve the Regular Zoning Board of Appeals Meeting held on December 6, 2001 at 6:00 p.m. Motion carried, 6-0.

AUDIENCE PARTICIPATION: No audience participation at this time.

BOARD DISCUSSION: No Board discussion.

NEW APPLICATIONS:

Post-poned from December 6, 2001:

- | | |
|---------------|--|
| 1. ZBA #01-52 | BY: Lawton & Martha Williston
5465 Lapeer Rd.
Burton, MI |
| | RE: Parcel #59-14-526-007 (Lot 10)
Parcel #59-14-526-008 (Lots 11 & 12)
Parcel #59-14-526-009 (As to Lots 13, 21 & 22)
Cardinal Gardens, Sect 14, C-2 Zoned |
| | FOR: Special Temporary Variance to place accessory
structure in front yard area (4 Votes Required) |

Martha Williston, 5465 Lapeer Rd., Burton, MI, said on December 6, 2001, we brought before the Board the hardship and the reason for the request. You requested us to bring back a schematic. I have a letter the State has written directly to Mr. Strasser regarding the placement of the wells. In this letter it states the decision of the drilling cannot be made in advance. It has to be made at the time the drilling begins, it is not a pre-determined site location.

AUDIENCE PARTICIPATION:

Richard Jacobs, representing Beaver Auto Parts, 5460 Lapeer Rd., Burton, MI, said he expressed at the last meeting concerns regarding the shed. He suggests if there is a variance given, to put in writing that the structure be removed. My concern was if it was left there, somebody might use it for repair work on automobiles.

Mr. Strasser said in the Board's informational packet is a letter from the DEQ (Department of Environmental Quality) and the schematic site diagram indicating the approximate location of the wells on the site. In light of this and after conferring with our City attorney, in realizing this Board has the authority to grant a temporary or a yearly variance, our recommendation is that this be granted to the Williston's to approve this building on a yearly renewal situation. Also, you can add any other stipulations you see fit. Mr. Jacobs indicated that if they do vacate the premises, that the building be taken with them. That would not be unreasonable in a granted variance.

City Attorney Rick Austin, stated Section 21.07 of the Zoning Ordinance does allow this body to attach such conditions or limitations in granting a variance that you deem to be appropriate. Mr. Strasser and I have conferred, I do agree that you would be perfectly permitted and within your rights to attach as a condition, that if any variance be annual and renewable, the suggestion being that it be removed when the premises are vacated by the applicant. I would not have any problem with that condition also being attached as well.

Mr. Major stated should the drilling be completed, and the situation resolved, at that point in time the structure should go in the rear yard where it belongs.

BOARD DISCUSSION:

Mrs. Scott asked Mrs. Williston if she has an idea of when they will start the drilling.

Mrs. Williston said the contractor GES, is standing by ready to drill as soon as the language between Sunoco and the attorneys are approved.

Mr. Curtis asked if the City is involved any more than what they were December 6, 2001, as far as what is going to happen to that property. Also, is the DEQ coordinating all their involvement there through the City and keeping you aware of the situation at hand.

Mr. Austin replied that he cannot answer that question, maybe Mr. Major has information.

Mr. Major said the Fire Chief has been in contact with the DEQ and he is apprised of what is happening with the site. I met with him and he is going to try and keep Council and/or the Planning Commission apprised of what is happening. He has been kind of left out of that loop to this point, and he is going to send a letter out to monitor the situation until it gets resolved, one way or another.

Mr. Centilli asked Mrs. Williston if she understands that if the one year renewal is granted, the stipulation is if you decide to move, the shed will come down. If the drilling is done before the year renewal is up, the shed will be removed and placed in the back yard.

Mrs. Williston said after the drilling, what they may find, we are not going to know how able to re-mediate this situation and whether or not they may just come in and buy us. It is not to our best interest to remain there as far as health issues. If we stay, we will know then where the actually drilling was done, and if they can contain it or remove it. If we leave, we will take the shed, if we stay, it will be moved.

Brief discussion followed regarding wording of the motion.

BOARD RECOMMENDATIONS AND/OR ACTION:

Moved by Centilli, seconded by Curtis to approve ZBA#01-52 with the stipulation it is a one year renewal, or when the shed may be lawfully located in the rear yard.
Motion carried, 6-0.

2. ZBA #01-53

BY: Christopher Austin
1106 Forest
Burton, MI

RE: Lot 17 Glendale Acres, Sect 14, R-1A Zoned

FOR: To expand the non-conforming side setback of
5 ft. with an addition to the home; 10 ft. required.
(4 Votes Required)

Christopher Austin, 1106 Forest, Burton, MI, said he recently purchased his home and discovered the foundation is unstable under one half of it. At the present time the home is 7 ft. from the property line. I would like to remove this section of the house and rebuild a solid foundation underneath, and rebuild the house in the same location. Mr. Austin presented to the Board diagrams and a land survey.

AUDIENCE PARTICIPATION: No audience participation.

Mr. Strasser said the existing home is at 5 ft. from the north property line and he is wanting to build an addition at that same setback which is an expansion of his non-conforming side setback. We see no problem with the request.

BOARD DISCUSSION:

Mrs. Scott asked if he is starting to take the roof down.

Mr. Austin said this initially started as a roofing project. They got substantial rain and it started leaking through the roof. We got a shingle permit and removed the shingles on one half of the house, there were a couple of boards that were rotted, so we replaced those. We then got to the other side of the house and discovered the lap boards and trusses were rotted out. At that point I got a building permit to replace trusses on the top of the existing structure. Mr. Austin said as he got further into the project, there was no structurally sound way he could put new trusses on the old foundation and on the old walls. He needed to move this section of the house and re-build.

Mr. Centilli asked Mr. Austin if he is going with the same extension.

Mr. Austin said he is actually 7 ft. from the property line, and would like to continue that 7 ft. variance.

Mr. Centill asked if the carport will be removed.

Mr. Austin said yes, that will be removed and a structure of the same size will be put up in its place. Due to the fact the house was built in 1929, there are no footers underneath, and he will have to remove masonry and then rebuild it.

Mr. Centilli clarified that he is not going any closer to the lot line, he will be going with the existing house straight out.

Mr. Austin acknowledged that is correct.

BOARD RECOMMENDATIONS AND/OR ACTION:

Moved by Curtis, seconded by Scott to approve ZBA #01-53.
Motion carried, 6-0.

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3. ZBA #01-54

BY: Atherton Road Sales
6468 E. Atherton
Burton, MI

RE: Lot 1 Thomas Replat for Lot 7 Burton Homesites
Sect. 25, R-1B Zoned.

FOR: To expand the non-conforming use of the property with a
graveled turn-around area for delivery trucks. See Sect. 6.02,
Item 1. (4 Votes Required)

James McKittrick, 6468 E. Atherton Rd., Burton, MI, of Atherton Road Sales, said they would like to extend the current concrete we have along our warehouse to allow us to load and unload, and turn around our pick-up delivery trucks. At the current time we have anywhere between 10 to 12 children walking up and down the street. In the past we have been able to turn around and back in our driveway when we do our pick-up and delivery. This is causing congestion with people waiting in line to get by us and kids walking up and down the street. We know it is not a perfect situation. We would like to be able to alleviate some of this by being able to go into an area that we already use for this purpose, for the most part, and turn around back in there so we are not in the middle of Vineland Street.

AUDIENCE PARTICIPATION:

Leona Stephens, 3049 Vineland, Burton, MI, said she opposes the gravel yard variance by the property owner, and asks the Board to consider the core values of Section 21.05 of Zoning Ordinance 19. She feels there is not a hardship of the land, but rather a hardship the land users have created. Mrs. Stephens addressed her concerns of lack of legitimate land hardship, flawed sketch and unapproved site plan (highly visible storage, increased traffic and noise), health and value impairments of her property and, present non-compliance with the road setback variance on another zoning issue. Mrs. Stephens asked that her letter of concerns be submitted to the Clerk's Office. She thanked the Board for attention to this matter, and asked that they deny the gravel yard variance.

Linda Burris-Croley, 6223 Crabtree Ln., Burton, MI, said Vineland Ave. is R-1B residential, and it is unfortunate Atherton Road Sales is surrounding a residential area. The hardship to Atherton Road Sales is congestion due to school children walking down the street to go to school. I wouldn't consider congestion waiting for their delivery trucks to be a hardship. Open air storage is not acceptable as well. Mrs. Burris-Croley inquired regarding load limits on residential streets for delivery trucks, snow removal, traffic and noise. She indicated she agrees with Mrs. Stephens to support a denial on this request.

Phillip Kinsel, 7485 Troutwood Dr., said he is representing his parents, Elwood and Wilda Kinsel at 3035 S. Eugene. He is in agreement with the previous comments. The points are very much made, particularly the hardship against my parents and for the people that live in the local area. My folks moved in around 1978, and they are 200 ft. from the property. There is a considerable amount of noise in the area since the business has grown. It is a residential area. I looked up the word residential in the Webster's dictionary and it talks about it being a suburban, private household area. This area in 1978 was very quiet, a very nice place to live. As the Atherton Road Sales business has grown, the general quality of life has gone down for the people that live in that local area. Mr. Kinsel expressed further, they have been actively using the property next door to him to run lawnmowers, and we are not just talking about an hour a day. We are talking about continuously throughout the business day that they are hearing lawnmowers and trucks pulling in and out. They have observed trailers, trucks, utility trailers, continuous testing of tractors and lawnmowers. We ask the Board to consider a denial of the variance request.

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Robert Haus, 3064 Vineland, Burton, MI, said he is speaking on behalf of himself and he has a letter from a neighbor as well. As far as them wanting to turnaround with their tractors, kids are not out their all day long. They can have a set time for delivery. If they continue coming further down the road, it is going to tear up the road more. Mr. Haus read aloud a letter from Kathy Livingston, 3084 Vineland, Burton, MI. She said this request is not in the best interest of the families that live on Vineland. They have endured as much as they can handle as far as the business is concerned. She addressed concerns of congestion, lowering property value, and the present location being too small to accommodate future business. Mrs. Livingston said if this should pass, I hope Atherton Sales at the very least, should be made to

install a 12 ft. high privacy fence made of wood and not a chain link fence with plastic slates through them like is on their overhang. She asks the Board to please do the right thing for the people on Vineland and vote no to the variance request.

Barbara Haus, 3064 Vineland, Burton, MI, said the kids are not causing the congestion, it's their vehicles coming in and out. They are coming in on all sides. She does not see where the turnaround will make any difference. It is totally tearing up our road, and if they need to keep expanding they should go somewhere where they can have more room. We have a "No Turnaround Sign" on our street, and I believe where they want to put their turnaround is just past it.

Mr. Strasser said he had several calls throughout the week to this variance request. He advised Mr. Kalanquin to inform the applicant that since there is not a full Board tonight, the applicant has the right to post-pone his request.

Mr. Kalanquin re-iterated to Mr. McKittrick that he is entitled to a full Board.

Mr. McKittrick stated he wants to continue.

Mr. Strasser said there is an error on his part, the application says 5 votes are required, and only 4 votes are required as far as his request for expanding a non-conforming use of the property. The property is zoned residential, it is surrounded by residential homes. There are a couple of other businesses on Atherton Rd. This is a tough decision for the Board to make. The business has been there since 1951, and the homes have been there. They both have rights. Atherton Rd. Sales are trying to alleviate the congestion by trying to get some of their trucks off the road. As long as the residential rights are taken under consideration and they are not infringed upon, I would have to look at it and say, if everybody can be made happy, then this variance should be granted. If everyone cannot be made happy, I guess you have to look at something different.

Mr. Major addressed questions concerning load limits. He cannot tell what the number is, but the garbage trucks use it on a weekly basis. There are delivery trucks that service the residential homes too. Whether there are commercial trucks that go down the road, I don't feel you will have any more damage on the road from what the businesses put on versus the garbage trucks. Mr. Major stated further, it is based on axles. A heavy duty dual axle pick-up truck probably exceeds our load limitations. I don't see any appreciable damage due to the trucks on a gravel street. A paved road would be a different story, with the configuration and depth of asphalt. I haven't had any complaints on snow plowing, if our street department gets a call on it, I am not aware of it. Weather conditions are more of a problem for a gravel road than trucks are.

BOARD DISCUSSION:

Mr. Curtis inquired as to the number of deliveries the business receives in a week.

Mr. McKittrick responded that this is not for semi-trucks in my deliveries. This is so my ½ ton pick-up and two ½ ton delivery vans can get in and out of the road without causing congestion. We make deliveries every hour of every day. We are not going to increase or decrease the traffic in that area with this turnaround. It has nothing to do with that. It will allow us to get in and off that road easily and get turned around without having to use Vineland Ave. That is a public road and we have the right to use it within limitations.

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Mr. Curtis said your proposed request does not alleviate any of the problems that have been brought before us. You have a cabana overhead that can get a ½ ton pick up truck in there, and load in and out. It is all concrete and protected from the weather.

Mr. McKittrick said they need the room for customers, and that is where it becomes the issue. If we have a full parking lot, we don't have room to do that and it pushes us out into the street. We don't want to block and misuse the road. In the last 4 or 5 years, we probably have three times as many kids being dropped off at the end of that street, and we do not want to congest that area any more than we are.

Mr. Curtis said the egress and ingress to where you want to do the loading and unloading for your customers to deliver and pick up, if that gets blocked off prior to you getting a truck back there to load, you still have a problem.

Mr. McKittrick replied that area is not open to customers. There will be no large trucks coming down Vineland Ave. any more than what they currently are. This variance will allow us to pull our pickup trucks that are currently pulling in the same entrance in front of our barn, in and behind the barn and turn around so we do not have to wait in the road to get in. That is what we currently have to do.

Mr. Grantner inquired regarding the size of the proposed gravel area.

Mr. McKittrick replied it is approximately 100 x 100.

Mr. Grantner said although the emphasis has been on the gravel, I also see from the sketch you have proposed concrete. Is that just a square off in front of the storage barn.

Mr. McKittrick said that is correct. There is currently concrete on the side of the barn, half way.

Mr. Centilli said they have had a lot of complaints on this at Council, and from what I understand, you are trying to alleviate the problem, and this will relieve congestion. Mr. Centilli inquired regarding employee parking, and to clarify that this is for a turnaround so he will not be out onto Vineland.

Mr. McKittrick said there will be no employee parking back there. The parking lot is on the east side of the barn, we own the one side of that turnaround on the north side. There are people that back up to that on Vassar Road. Mr. McKittrick addressed the green space and stated they will make a berm, and they can also put up a privacy fence and add some trees. The down side to not agreeing to this variance is that we need to continue to do business the way we have been, and that is not accomplishing a whole lot.

Mr. Centilli asked if it is possible to approach the area you are talking about off of Atherton Rd.

Mr. McKittrick indicated it was not.

Mr. Centilli commented on pictures they have seen of trucks the citizens were complaining about. He asked if they will be there anymore.

Mr. McKittrick responded that no Atherton Road Sales trucks will be on Vineland Ave.

Mr. Curtis asked Mr. Major for his perspective on the situation, knowing the history of the problems.

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Mr. Major said he is doing as much as he can possibly do, if we were putting him through site plan review. Your toughest decision is to keep the residential and business sector happy when they abut each other. You have a small business there competing with all the big businesses coming into Genesee County and the City of Burton. If you don't allow him to have a reasonable expansion you will run the small businessmen out of the City. I don't think this Board should sit there and do that. I don't believe what he is proposing will cause any more of an adverse affect on the residents then what he does there today. Mr. Major stated further, he would like to believe Mr. McKittrick is going to try and improve the situation with this.

Mr. Welch said this is not an ideal situation to begin with. I think they are trying to improve the situation and if this will alleviate some of the traffic on Vineland, I would be in favor of it.

Mr. McKittrick said we have worked the last 5 to 7 years to keep the semi-trucks off of those roads. We are not perfect, I cannot control the citizens of Burton to park where they want to park. We do our very best to keep people off of

Vineland. I know it is not an easy situation. When my grandfather started this business in 1951, there were four businesses on that corner. Today there is three businesses on that corner.

Mr. Curtis inquired to Mr. Major as to the type of fencing and berming that would be required by the DPW to help buffer between residential and the business.

Mr. Major responded that what Mr. McKittrick proposed is typically what the DPW would recommend at a Planning Commission meeting, the berming, screening and landscaping.

Mr. McKittrick said he would berm and fence all three sides.

BOARD RECOMMENDATIONS AND/OR ACTION:

Moved by Curtis, seconded by Grantner to approve ZBA #01-54, contingent upon a 2 to 3 ft. berm with a 6 ft. privacy fence, and trees on residential lot lines, subject to administrative review by the Planning Commission.
Motion carried, 4-2. Scott – no, Kalanquin – no.

4. ZBA #01-55	BY: Eugene & Kelly Luxton 2230 Webber Burton, MI
	RE: Parcel #59-32-552-094 2112 Brady, Lot 215 Stratmoor
	FOR: To expand the non-conforming side setback with an addition to the home, 8 ft. required; 4 ft. requested. (4 Votes Required)

Eugene Luxton, 2230 Webber, Burton, MI, said he requests a variance to build straight back from the existing home. The home is 4 ft. from the property line and I am trying to expand straight back.

Mr. Kalanquin inquired as to the hardship.

Mr. Luxton said the house is just too small, it is 20 x 24, just big enough for one bedroom.

AUDIENCE PARTICIPATION: No audience participation.

Mr. Strasser said this is a common problem on small lots within the City. He recommends approval.

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BOARD DISCUSSION: No Board discussion.

BOARD RECOMMENDATIONS AND/OR ACTION:

Moved by Scott, seconded by Curtis to approve ZBA #01-55.
Motion carried, 6-0.

Mr. Kalanquin announced the next regularly scheduled meeting of the Zoning Board of Appeals will be held on **Thursday, February 21, 2002, at 6:00 P.M.**

Meeting adjourned at 7:03 p.m.

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