

CITY OF BURTON
REGULAR ZONING BOARD OF APPEALS MEETING MINUTES
SEPTEMBER 17, 1998, 6:00 P.M., COUNCIL CHAMBERS

THE MEETING WAS CALLED TO ORDER BY William Kalanquin AT 6:00 P.M.

MEMBERS PRESENT: Kalanquin, Berry, Scott, Parker, Centilli, B. Weatherford, Layman.

MEMBERS ABSENT: None

OTHERS PRESENT: T. Strasser, Deputy Planning Official, R. LaDuke, Building Superintendent,
Attorney Richard Hamilton, J. Adams, Clerk's Office.

Moved by Berry, seconded by Scott to approve and authorize the minutes of the Regular ZBA Meeting of August 20, 1998, 7:00 p.m.

Motion carried, 7-0.

Moved by Parker, seconded by Berry to approve and authorize the Special ZBA Meeting of August 11, 1998, 5:30 p.m.

Motion carried, 7-0.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., Burton, MI, spoke on the following areas: The Board benefiting with the use of some citation to the Zoning Ordinance regarding the variances; Unfair criticism of the Zoning Board of Appeals at the last Council meeting regarding an applicant's case; The Board at times is not given enough information to spend on a case; Our rules should be stated in the beginning to the applicant.

BOARD DISCUSSION:

Mr. Parker spoke regarding ZBA #98-42, Gerry Hendrix at 2296 Timber Run, Burton, MI, an applicant at the last ZBA meeting. Mr. Parker feels he erred, he had spoke for the variance and after looking at the property closer, the swimming pool is right in the neighbors front yard that lives on the north side of that house. He received communication from Gerald Smith who lives on the same street and he obtained an architect drawing of the property. Based on the measurements that were taken, he thinks the pool could go in the back yard area. Mr. Parker said Mrs. Hendrix commented that she thought the pool would look bad from the street going into the subdivision. Since they are putting up a fence anyway, it would hide that pool in the back yard area. She also stated she thought it would decrease the property value by cutting the trees, but they look more like shrub brush then trees. Mr. Parker said he feels this is a valid argument.

Moved by Parker, seconded by Centilli to re-hear ZBA #98-42.

Motion carried, 6-1. Berry - yes, Scott - yes, Parker - yes, Centilli - yes, B. Weatherford - yes, Layman - yes, Kalanquin - no.

Mr. Parker indicated that in speaking with Mr. Strasser, it is his understanding that since the motion did carry, they need to re-hear this case. There will be audience participation and presentation by the applicant.

Mr. Kalanquin asked if the applicant was present in the audience.

Lolita Hendrix, 2296 Timber Run, Burton, MI, indicated her presence and acknowledged she would like to present her case again and that if we are going to re-hear this, she asked if it would be appropriate to re-notice the residents that live within 300 ft.

Attorney Hamilton said the appropriate motion is one to re-consider. You conducted your hearing and closed the hearing, and now you had a motion to re-consider your decision. The determination of whether or not to take additional evidence for the purposes for this hearing, is a procedural determination to be made collectively by this Board. If you are going to take additional evidence, it would require additional notice because in effect, you are re-opening and conducting an additional hearing. He is assuming, the public input portion of the hearing before this Board was closed, then a motion was made and acted upon by this Board. It is appropriate for you, this being the next meeting, to reconsider that action, but if you are going to take additional testimony and evidence, you should re-notice so that everyone that would have an opportunity to add input.

Attorney Hamilton spoke further that he does not think they need to re-open it for further evidence to reconsider, but if it is decided to do that, the most appropriate course of action would be to re-notify everyone who had the opportunity to speak before and to have the opportunity to speak at the extended hearing.

Mr. Kalanquin asked Mrs. Hendrix if that is what she wished, to re-notify the people.

Mrs. Hendrix indicated yes.

BOARD DISCUSSION:

Mr. Parker said at the hearing before, the applicant and one of her neighbors across the street stated they measured the back yard and did not feel the pool would fit in there. He is unsure of what is determined as new evidence. This gentleman obtained an architect scale and determined that it could fit in the back yard. Mr. Parker inquired to Atty. Hamilton if that is determined as new evidence.

Attorney Hamilton said if you are going to accept that report as evidence, and apparently that has been distributed to you not in the course of the hearing, but subsequent, and you are going to take an action based on that report, you need to have another hearing. You cannot conduct a hearing, close the hearing, and get evidence from a collateral source to take action.

Mr. Parker said to re-notify and do that, his concern is because of the way the structure is of this Board, to re-hear a case, you have to state that at the next case, and they have done this.

Attorney Hamilton indicated there is a difference in re-hearing the case and reconsidering the decision. A public hearing is required. A public hearing is based on notice, to who the State Law determines as the party's interest, and the opportunity for anyone who has an interest in the matter to speak and present their testimony. Once that is all done, the public hearing portion of the action is closed, then this Board votes, and that is not a public hearing, that is action of this Board. For re-consideration, you do not have to re-open the hearing to reconsider the action, but if you are going to take action based on information from a collateral source, fair play requires that you re-open the hearing so that anybody that has additional evidence will be permitted to submit it.

Mr. Parker asked if they re-open the hearing, it still follows the procedure to re-open the hearing done at the next meeting. It is his understanding that if it is not done at this meeting, then the variance stands. If we take action to reopen it, does that then invalidate the action at the last meeting.

Attorney Hamilton said the term is not re-open the hearing, what you are technically permitted to do is to re-consider an action already taken by this Board, which is basically a procedural rule of Roberts Rule of Order. That permits you to properly put the matter before this Board to look at it again. That is a different issue then conducting a public hearing. You can take action again without the middle of any additional evidence, or you can also re-open a hearing, which you must notice and there has been no notice. If you are going to take new evidence, which is in affect, re-opening the hearing, then we should give notice paternal to the statute, so that anyone who has an interest in presenting evidence at that hearing may do so. In answer to your question, it takes two separate actions.

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Mr. Parker asked if his original motion is valid or does he need to make a motion to re-open.

Attorney Hamilton said assuming you really intended to reconsider this matter which I think everyone assumes, was that your motion was a motion to reconsider, then your action was appropriate. That does not mean you have to reconsider it at this meeting.

Moved by Parker, seconded by Berry to re-open the hearing for ZBA #98-42 at the next regular scheduled ZBA meeting on October 15, 1998.

Motion carried, 7-0.

Mr. Strasser said he presented a revised ZBA application form and asked that the Board members review the form and see if it is agreeable.

Mr. LaDuke said they want the applicant to state their hardship in writing on the application so the Board receives it when they get their package, and hopefully that will give an insight to what and why the applicant wants the variance, and when the Board members go out to look at the site, they will see what the applicant is asking for.

Mrs. Weatherford indicated it is hard to find many of the streets and it would be helpful if they knew a crossroad or had better directions.

Mr. LaDuke said they will try to improve on it. Mr. Strasser is also available for information or any questions.

NEW APPLICATIONS:

- | | |
|---------------|---|
| 1. ZBA #98-48 | BY: Integra Enterprises for Advance Auto Parts
P.O. Box 5508, 565 Hwy. 5 S
Pinehurst, N.C. 28374 |
| | RE: Part of 59-10-100-022
Center Road frontage, South of Starlight
Coney Island, Sect. 10, M-2 zoned. |
| | FOR: To construct a parking lot for a retail parts store
with 34 spaces, 47 spaces required. (4 Votes) |

Kevin Cleaver, from Gould Engineering, 2040 E. Maple, Flint, MI, said he is representing Integra. He said the request should also read from M-2 to M-1, and also a parking lot reduction. They have highlighted on the map the location of the site on Center Rd., South of Davison, South of the Star-Light Coney Island and a portion of General Motors property. They want to develop a retail auto parts sale, they have gone for a site plan approval, and has been approved subject to agency and ZBA approvals. The surrounding properties are all M-2, they feel the retail will fit within the adjacent uses, being the coney island and behind it a parking area currently being used for General Motors and also would allow you to expand this type of use possibly along Center Rd. and make for a better usage then your general industrial district. Mr. Cleaver indicated it would be a 47,000 sq. ft. retail building. The reason they need a reduction in the parking space, with the required retention areas that are going to be required by the Drain Commission, there is not the space or the need by the client for the 47 spaces required by ordinance. The area is 1.5 acres in size.

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AUDIENCE PARTICIPATION: No audience participation.

Mr. LaDuke said the DPW does not have any problem with this.

Moved by Berry, seconded by Layman to approve ZBA #98-48 as written.
Motion carried, 7-0.

Mr. Parker asked if the M-1 to M-2 was taken care of at the Planning Commission.

Mr. Berry indicated this is just for the parking.

2. ZBA 98-49

BY: John Toth
2298 N. Belsay Rd.
Burton, MI

RE: 59-01-100-022
R-1A Zoned

FOR: To establish a new building lot at 80 ft. of road
frontage, 85 ft. required by ordinance. (4 Votes)

John Toth, 2298 N. Belsay Rd., Burton, MI, said he is requesting a variance on the 5 ft. required, he is 5 ft. short to split his lot, which requires 85 ft. He does not believe this will cause his neighborhood any hardship. He just had back surgery and it is quite a job to take care of the property. His wife's aunt is looking for property to build her retirement home on, so that is why he is asking for a variance. He submitted a picture of the home she wants to build. Mr. Toth indicated she wants to set it back to face Belsay Rd. and if they ever widen Belsay Rd., she would still have enough set back on her property to have a front yard.

AUDIENCE PARTICIPATION:

Don Jones, 6057 Brookwood, Burton, MI, expressed his concerns if Mr. Toth subdivided his property into an 80 ft. lot, that he could not build a home comparable to the rest of the homes in the neighborhood. He has seen a lot of development through there, they subdivided that property a few years ago into 100 ft. lots and even when they did that, they had to come back and ask for variances. Mr. Jones stated that is a nice neighborhood and a good tax base and does not think any of the neighbors want to see a modular home go in there. He may have real good intentions but once that property is subdivided, he could sell that property to someone that would put in a sub-standard home, maybe that is not his intention but it could happen.

Pauline Dargel, 6119 Hugh St., Burton, MI, asked about the dimension, frontage of the property and if it has been split yet.

Mr. Berry indicated lot splits are done at the Planning Commission meeting.

Mr. Toth said a modular home is not his attention. He lives in the neighborhood too, and will not do anything that is detrimental to it. The drawing that he submitted is the home the aunt is wanting to build and it would be comparable to the neighborhood. He is only planning on selling the property to the aunt, otherwise he would not be here today.

Mr. Jones said he is sure Mr. Toth has the best intention, but if approved, the Board does not have any control of what is done to that property. He spoke again on the 100 ft. lots that were subdivided and potential problems.

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Mr. Strasser said after further review, the drawing the Board members have is incorrect. The north side of the proposed split is Brookwood Dr., it shows there is a 10 ft. set-back off of that north line and in fact it would be a 30 ft. set-back because it would be considered a front yard. The 30 ft. set-back on Brookwood and there is a 10 ft. set-back on the south side of that lot that would leave a 40 ft. wide building envelope. It would have to face Belsay Rd. If approved at a sub-standard lot of 80 ft., there could be additional variances if this is not the house they want to put in. The ordinance calls for 85 ft. for a newly created lot. Mr. Strasser indicated if granted, they will have to put in an additional sewer lead, so there are potential problems down the line because of the set-back.

BOARD DISCUSSION:

Mr. Centilli said Mr. Toth explained the reason for the variance but not the hardship.

Mr. Toth said he is unclear what is meant by a hardship, he thought a hardship was because he was 5 ft. short. He mentioned having back surgery and the idea of selling to the aunt so he would not have to take care of the yard anymore. She plans to extend the one plan deep enough where she can build an adequate house to fit into the neighborhood. Mr. Toth inquired to Mr. Strasser regarding the water and sewer.

Mr. Strasser indicated when things like this come up, they constantly tell the person that is wanting to sell the lot, the purchaser or builder, that they will have to put in an additional sewer lead at their cost and not ours. Time and time again, people say no one ever told them.

Mr. Toth indicated he spoke with Mr. Riess on the location of the hook-up and it has been thoroughly discussed. Mr. Toth spoke on the need to replace his sewer lines and stated that for the record, he is not going to say I did not know because we are fully aware of what is at stake.

Mr. LaDuke said each property is afforded one sewer lead and if they split a property it is always at their cost. He stated further, did he have a hardship to sub-divide this lot, that is what has to be decided.

Mrs. Weatherford inquired as to allowing one line to two properties.

Mr. Parker indicated he went to look at the site and in seeing that it was a corner lot, he agrees with Mr. Jones that it is a sub-standard lot for that neighborhood and the two new subdivisions in that area. He does not feel that the house would fit on that property. In the short time he has been on the Board, there is always someone coming back, and not necessarily his aunt that will, but somebody will come back because they want something due to the 30 ft. set-back on that corner lot it. Mr. Parker said he could not support this.

Moved by Layman, seconded by Berry to approve ZBA #98-49.

Motion carried, 5-2. Berry - yes, Scott - yes, Parker - no, Centilli - no, B. Weatherford - yes, Layman - yes, Kalanquin - yes.

3. ZBA #98-50

BY: Mark Huber
2407 Stockbridge
Burton, MI

RE: Lot 137 Richfield Gardens, Sect. 2, R-1B zoned.

FOR: To construct an attached garage at 18 inches from
the north lot line, 10 ft. required. (4 Votes)

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Mark Huber, 2407 Stockbridge, Burton, MI, indicated he wants to put in a 22 ft. garage at the side of his house with a 6 inch drip edge which will leave him at 18 inches off the lot line. His hardship is he lives on a hill which falls off approximately 1 ft. for every 4 ft., to put a garage on the back end of the house, he would have to fill in 4 ft. plus there is existing landscape back there. To offset the house in front of the garage, he has a porch that is concrete, a bay window that is 4 ft. from the edge so he still would not fall into the variance by 10 ft. Mr. Huber stated other neighborhood homes have had variances with attached garages.

AUDIENCE PARTICIPATION: No audience participation.

Mr. Strasser said if this is approved we would highly suggest that garage doors be placed on both sides, front and back, to have access to the rear yard for vehicles, boats, etc.

BOARD DISCUSSION:

Mr. Parker said Mr. Huber in his application, sent a letter regarding hardship. He made a reference to other houses in the neighborhood and specifically 2463. In driving by that house, he noticed it does have an attached garage added to it, but it is on the south side of the property which is far away from that house. If Mr. Huber receives this variance, because of the situation of the house that is directly north of him, he would be very close to his neighbor. Mr. Parker said he knows the noises he makes in his own garage doing different things and if he lived on the north side of that property with his bedrooms next to that garage, he cannot support this. It is too close to the house next door. A lot of times when they have voted on something like this, the structure on the adjacent piece of property is far enough away that it does not cause any adverse effects, but he does not feel that this meets that. He does understand the back of his house falling away, but at the same point, if he built in the back, he does not know why he would have to fill the whole area in. Unless he is mistaken, he could build the foundation down and put blocks up, and not fill the whole area in. Based on all this, in his opinion it should be denied.

Mr. Centilli said he looked at the site and the house on the north side has a 16 ft. garage, and if Mr. Huber had a 16 ft. garage, he would be approximately. 10 ft. from the other house which would give him some room to at least walk back there because when he is through building this, he will not be able to walk in the back of his house on that side because of the fence and it would be right against the garage. There would be 5 ½ ft. from the garage to the next house. He would recommend a 16 ft. garage but not a 22 ft. garage.

Mr. Kalanquin passed the gavel to Mr. Berry.

Mr. Kalanquin asked Mr. Huber if this is approved, would he adhere to the guidelines this Board and DPW sets forth.

Mr. Huber stated yes he would.

Moved by Parker, seconded by Centilli to deny ZBA #98-50.

Motion denied, 6-1. Layman - No.

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4. ZBA #98-51

BY: Jack Campbell
2276 Ridgemoor Ct., Burton
5472 N. Vassar Rd., Flint

RE: 2276 Ridgemoor Court
Lot 25, Ridgemoor, Sect. 1, RM Zoned.

FOR: To exceed the allowable square footage for accessory structures by 1,044 sq. ft. with a 26 ft. x 42 ft. structure proposed. To exceed the allowable height by 1 ft., 14 ft. required, 15 ft. proposed. (4 Votes)

Jack Campbell, 2276 Ridgemoor Ct., Burton, MI, indicated he wants to build a garage in the back of his property. He has three vehicles, one antique car and lawn equipment. The garage will be 26 ft. wide, 42 ft. long and his

neighbor has the identical garage right next door. The lot size across the back of his property is 178 ft. and he is wanting to use 26 ft., next to him is a 15 ft. right-of-way, so no one can build there. Mr. Campbell said he wants to brick the building to match the home and use cedar trim. He spoke to every property owner in the back and they have no problem with it, and he had everyone sign a letter he is presenting to the Board along with a drawing.

AUDIENCE PARTICIPATION:

Richard Hamilton, 2250 Ridgemoor Ct., Burton, MI, said he owns the property south of the subject parcel. He is also responsible for the subdivision and architectural control for Ridgemoor Subdivision. He reviewed Mr. Campbell's plan and is familiar with the building. Mr. Hamilton indicated it will be a welcomed addition to the subdivision and will enhance an already beautiful home.

Mr. LaDuke said DPW had a chance to look at the plans and an opportunity to speak to a couple of residents, they have shown no displeasure. We recommend approval.

BOARD DISCUSSION:

Mrs. Weatherford stated the plans showed a bathroom and she inquired if there was to be a bathroom included.

Mr. Campbell indicated that there is to be a bathroom.

Mr. LaDuke said the building will probably serve as a nice workshop.

Mr. Berry said his concern is the second floor and its use.

Mr. Campbell said the second floor will not be finished and is just for storage.

Mrs. Scott inquired if it is for a cosmetic look.

Mrs. Weatherford said she remembers they turned down an applicant that had an upstairs in a garage, because he was going to use it for bedrooms for guests.

Mr. LaDuke said Mr. Campbell made a statement for the record that it would not be and if he did, he would be in violation of our ordinance. If any of the neighbors in that neighborhood would call and say someone was living in this gentlemen's barn or garage, we would send someone out to check, but I do not believe this is the case.

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Mr. Campbell said there is no intention of putting anyone up there, ever.

Moved by Berry, seconded by Parker to approve ZBA #98-51.

Motion carried, 7-0.

5. ZBA #98-52

BY: Janice Howes
5363 Sitka
Burton, MI

RE: Lot 52 Eastgate #3, Sect. 26, R-1B Zoned.

FOR: To exceed the height requirements for an accessory structure by 6 inches, 14 ft. required, 14 ft. 6 inches requested. (4 Votes)

Robert Howes, 5363 Sitka, Burton, MI, said he is building a 30 x 40 garage with 12 ft. sidewalls. He has a 26 ft. fifth wheel, an antique farm tractor and would like to accommodate the extra height for anything he does buy when

he retires. The structure will be shingled roofed and located in the center of his property. He has approximately 1.95 acres, 132 x 594 deep, the garage will be 200 to 250 ft. off the road.

AUDIENCE PARTICIPATION: No audience participation.

Mr. Strasser said the property is in excess of one acre, so the sq. footage of the structure of the building has no bearing on this, it is just a matter of being 6 inches higher than what is allowed. Mr. Strasser inquired as to the materials to be used.

Mr. Howe indicated steel siding, shingled roof. The siding he is using has a 25 year guarantee not to rust.

Mr. Strasser indicated DPW has no problem with the request.

BOARD DISCUSSION:

Mr. Centilli inquired as to the depth of the lot.

Mr. Parker said he normally inquires to the use of vinyl siding, but because of where it is situated and the size of the property, steel siding would be appropriate for this building.

Mr. Howes said he intends to go with a light stone color which is as close to matching his siding on the home.

Moved by Weatherford, seconded by Scott to approve ZBA #98-52.

Motion carried, 7-0.

6. ZBA #98-53

BY: Susan and Barbara Peel
2216 Webber
Burton, MI

RE: 2216 Webber, Lots 5,6, and 7 Southmere, Sect. 32,
R-1C Zoned.

FOR: To keep addition to home at 2 ft. from detached
garage, 10 ft. required. (4 Votes)

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Susan Peel, 2216 Webber, Burton, MI, said she co-owns the home with her mother, Barbara Peel. They have been in the house for 40 some years. They are asking for the relief on the 10 ft. variance to the garage to make this 2 ft. between the garage and the house. Their hardships are numerous right now, they have part of the structure up due to a miscommunication between the contractor and the building department. They put in a \$2,300 cement driveway two years ago, so it is impossible to move the garage at this point. They have been saving for seven years to do this project and have no money at this point to change it. They had intended to put a fire protection between the garage and the house. Her mother is 66 years old, has fallen in the driveway once and she wanted to make the house and garage as close as possible for her.

AUDIENCE PARTICIPATION: No audience participation.

Mr. LaDuke said given the circumstances behind the confusion, they talked to the owner about the firewall and they agreed to do that. They have no problem with the variance.

BOARD DISCUSSION:

Mr. Centilli said he has been out to the job site, and there is a lack of communication between the building department and their builder. He checked with the neighbors and there has been no complaint against it. It is a nice addition to the home and he would be in favor of it.

Mr. Parker said because this is so close to the garage, what measures have been taken for that.

Mr. LaDuke indicated 5 inch drywall on the inside of the garage for a firewall and they will have to drywall that.

Moved by Berry, seconded by Weatherford to approve ZBA #98-53.

Motion carried, 6-1. Parker - No.

AUDIENCE PARTICIPATION:

Dennis Kinder, 1224 S. Genesee, Burton, MI, said he would like to make a request of the ZBA to waive the fee for the ZBA application. He indicated he is in financial hardship, and is asking to have the \$50.00 fee waived. He needs to make an application to come before the Board.

Mr. Kalanquin asked if this is the same case they heard about a year ago.

Mr. Kinder indicated yes, and that he is in financial hardship.

Mr. Kalanquin said he does not know if they have the authority to do that.

Mr. LaDuke said the Council would be the only option to waive fees. Mr. Kinder will be put on the next agenda for the October meeting.

Mr. Kalanquin said he concurs and that Mr. Kinder should go to the Council first.

Mr. Parker spoke regarding Mr. Kinder coming before the Board in the past.

Mr. LaDuke said it was approved and he was given 9 months to re-structure the house which had a fire on Memorial Day 2 years ago. He has failed to re-build his house, because of circumstances dealing with his insurance company. He appeared in Court today and the judge instructed him to come back before this body and see if they would allow him to continue with the variance or give him more time. The October meeting is where he will present his case and the DPW will have a recommendation at that time also.

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Mr. Parker said he thought that was a couple of years ago, and was curious why Mr. Kinder would be reappearing before the Board when action was already taken.

Mr. LaDuke said the Board gave him 9 months, and it expired in March of this year. He has been in the court system sometime after March. We took some time to give him an appearance ticket and have been in Court with him trying to take care of that problem.

The next regularly scheduled meeting of the Zoning Board of Appeals will be held on Thursday, October 15, 1998 at 6:00 P.M.

MEETING ADJOURNED AT 7:24 P.M.

JRA