

CITY OF BURTON
REGULAR ZONING BOARD OF APPEALS MEETING MINUTES
OCTOBER 15, 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: R. LaDuke, Building Superintendent, T. Strasser, Deputy Planning Official,
J. Adams, Clerk's Office.

Moved by Berry, seconded by Parker to approve and authorize the minutes of the Regular ZBA Meeting of September 17, 1998, 6:00 p.m.

AUDIENCE PARTICIPATION: No audience participation..

BOARD DISCUSSION:

Mr. Parker asked if the Clerk's office will notify the members when they have a new alternate.

Mr. Centilli inquired as to the new application being used.

Mr. LaDuke indicated they will be ready for review at the next meeting.

NEW APPLICATIONS:

- | | |
|---------------|--|
| 1. ZBA #98-54 | BY: David J. Schmieder
1189 Rinn St.
Burton, MI 48509 |
| | RE: 1189 Rinn St., Lot 26, Rinn Acres, Sect. 13,
R-1A Zoned. |
| | FOR: To construct a 28 ft. x 30 ft. garage and exceed the
allowable sq. footage for accessory structures by
326 sq. ft., 864 sq. ft. allowed, 1,190 sq. ft. proposed.
(4 Votes) |

David Schmieder, 1189 Rinn St., Burton, MI, stated he wants to build a 28 x 30 attached garage on the north side of his house. He presently has two garages and will take down one of them and leave one up on the south side. He is eliminating a driveway on the south side of the property and will use the existing garage as a workshop.

AUDIENCE PARTICIPATION: No audience participation.

Mr. LaDuke indicated he drove to all the sites on the agenda. Part of the building permit would be that the other garage has to be taken down as part of the application. They see no problem with the request.

BOARD DISCUSSION:

Mr. Centilli asked about the height.

Mr. Parker asked about meeting all required regulations and vinyl siding.

Mr. LaDuke said he is not asking for any height variance.

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Mr. Schmieder said he is putting on vinyl siding to match his house.

BOARD ACTION AND/OR RECOMMENDATIONS:

Moved by Berry, seconded by Layman to approve ZBA #98-54.
Motion carried, 7-0.

2. ZBA #98-56
- BY: Ed Wolff
1499 Denies
Burton, MI
- RE: Lots 527, 528, 529, Lapeer Heights, Sect. 14
R-1B Zoned.
- FOR: To exceed the allowable sq. footage for accessory
structures by 108 sq. ft. with a 12 ft. x 16 ft. shed.
(4 Votes)

Ed Wolff, 1499 Denies, Burton, MI, presented pictures of a shed he wants to build and indicated it will have vinyl siding.

AUDIENCE PARTICIPATION: No audience participation.

Mr. LaDuke indicated there is no reason it should not be granted.

BOARD DISCUSSION:

Mr. Berry asked if the color will match the home.

Mr. Wolff indicated his home is brick and the color will be tan to blend with the brick.

BOARD ACTION AND/OR RECOMMENDATIONS:

Moved by Parker, seconded by Layman to approve ZBA #98-56.
Motion carried, 7-0.

3. ZBA #98-57
- BY: David C. Oakes
Representing Lowe's Companies, Inc.
CESO, Inc.
7725 Paragon Rd.
Dayton, OH 45459-4051
- RE: #59-15-100-018
- FOR: Permission for use of parking lot and front sidewalk
for seasonal sales items as shown on enclosed plan
(Exhibit "A") (5 Votes)

Eric Mattson, CESO representative for Lowe's Companies, Inc. is proposing to use the front sidewalk in front of the store as well as the area of the parking lot for seasonal items. Items will be lawnmowers, snow blowers, outdoor grills, and an overflow from the garden center where they have additional plantings that cannot fit in the designated garden center area, such as bags of mulch and other lumber items in concurrence with what they do at other stores.

AUDIENCE PARTICIPATION:

Larry Petrella, 1081 Howe Rd., Burton, MI, spoke regarding the Zoning book, page 145, C-4, Plan Shopping Center District. He inquired as to the hardship of this case and Council approval.

Mr. Strasser indicated it does not go to Council for approval. Mr. Strasser spoke further regarding the variance, site plan review and zoning ordinance.

Pauline Dargel, 6119 Hugh St., Burton, MI, inquired if Wal-mart was a C-2 or C-3 and spoke regarding Home Depot's nursery stock outside. She spoke further on the hardship, sidewalks and handi-cap concerns.

Mr. Mattson said they want to make sure everything is in order before they go in and nothing is final until it is actually built. It is one of the factors that is considered in site selection as well as the profitability and other financial figures, if in deed they can have a sales area.

Mr. Strasser indicated as far as there request goes, they do agree with it but there are some limitations they would like to see placed on it such as a yearly renewal. There request is not unique, Home Depot, Wolohan, Meijers, Wal-Mart, Kessels all have it. Mr. Strasser indicated they have a reservation regarding the sidewalk use which could be a hinderance as far as fire protection, handi-cap entrances. There is a certain amount of footage for pedestrians to use directly in front of the store.

Mr. Kalanquin asked if they could make limitations.

Mr. Strasser indicated yes.

Mr. LaDuke said it should be limited to a year, and there should not be any wood products out front. They are aware of the problems they had at Home Depot and there is not the staff to police it continually. If it is something that is kept neat and on a yearly basis, they will review it and DPW would not have a problem with that. They would like to limit it to grills or a few items. Mr. LaDuke asked the applicant if the wood product is lumber.

Mr. Mattson indicated an overflow of lumber.

BOARD DISCUSSION:

Mrs. Layman asked if there would be fertilizers outside.

Mr. Mattson indicated mulch, and that he does not have an itemized list of what other items are to be outside.

The following items were discussed at length: site plan review, sidewalk, displays, traffic, handi-cap access, seasonal sales, security of outdoor items, guidelines, stipulations and regulations.

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BOARD ACTION AND/OR RECOMMENDATIONS:

Moved by Parker, seconded by Centilli to approve ZBA #98-57 with the stipulation the corral will follow DPW regulations and guidelines and a yearly renewal (April 6th through July 27th).

Motion carried, 5 - 2.

Berry - yes, Scott - no, Parker - yes, Centilli - yes, B. Weatherford - yes, Layman - no, Kalanquin - yes.

4. ZBA #98-58

BY: Centennial Farms
401 S. Woodward, STE 400
Birmingham, MI 48009

RE: 6401 E. Court St.

FOR: To erect a second on-site sign.
(5 Votes)

Richard Winkleman, 401 S. Woodward Ave., Ste 400, Birmingham, MI, representing Centennial Farms, passed out information to the Board members regarding the variance request. He indicated Centennial Farms have been a part of Burton for the past 4 years and they are in the process of developing their final phase. The final phase will be in the very back of the community, and they would like to erect a temporary sign advertising those available sites. The sign will meet all requirements of local ordinances, each face of the sign will be approximately 10 x 15 and 300 sq. ft. according to the ordinance. The sign will remain in position until the final phase is all leased.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., Burton, MI, inquired as to Ken Thompson from New Haven and the affiliation of the sign.

Mr. Winkleman said Mr. Thompson was before the Board previously and handles the construction end of their business. Mr. Winkleman said he is the vice-president of the Brookside Management Co. and takes care of all the day-to-day operations.

Mr. Strasser said the sign they have now is very nicely done and so is the landscaping. They are asking for a second on-site sign. Mr. Strasser indicated he has looked at other modular home parks and seen the same type of displays. There is a problem with the temporary sign until the phase is full. If part of the park is never full, the sign will stay there permanently. The size of the sign is of a small billboard which is very large and they have reservations about it.

BOARD DISCUSSION:

Mrs. Layman said the sign they have now is very nice but feels a big sign will take away from it.

Mr. Winkleman said the sign they have now is at all the communities during lease-up especially with the location of their property with the highway visibility. To have a sign temporarily of this nature for the visibility from the highway is a great plus to them and lease up the community at a faster rate. There was a large sign on the property when they developed phase 4 that had to come down afterward.

Mrs. Layman asked what is temporary.

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Mr. Winkleman said he is willing to work with the Board on making a stipulation of how long he can have the sign up.

Mr. Parker inquired about the graphics and the height. He asked how long it took for phase 1 to be leased up.

Mr. Winkleman said phase 1 took about 1 to 1 ½ years to fill up and included approximately 110 sites, and phase 2 approximately the same about of time. They built 4 phases, 75 sites are available out of 380 sites. Phase 5 is another 75 sites.

Mr. Centilli asked about the landscaping and size of the sign. He asked if they would agree to a 8 x 12 sign.

Mr. Winkleman said that would be satisfactory.

BOARD ACTION AND/OR RECOMMENDATIONS:

Moved by Centilli, seconded by Berry to approve ZBA #98-58 with the stipulation that the sign be 8 ft. x 12 ft. for a period of one year.

Motion carried, 5 - 2.

Berry - yes, Scott - no, Parker - yes, Centilli - yes, B. Weatherford - yes, Layman - no, Kalanquin - yes.

5. ZBA #98-42

BY: Jerry Hendrix
2296 Timber Run
Burton, MI

RE: Lot 51 of Hidden Trails, Sect. 24, R-1B Zoned.

FOR: To construct a pool in a front yard set-back where house faces street on two sides. No back yard available to construct pool in. (4 Votes)

Applicant not present.

Mr. LaDuke indicated the pool has been moved and there is no need for this variance.

AUDIENCE PARTICIPATION:

Gerald Smith, 2302 Wood Creek, Burton, MI, indicated he sent the Board members a packet and wanted to thank the Board for taking another look at it and reviewing all the facts stated.

BOARD DISCUSSION AND/OR RECOMMENDATIONS:

Moved by Parker, seconded by Layman to deny ZBA #98-42.

Motion carried to deny, 7-0.

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6. ZBA #98-55

BY: Dennis Kinder
1224 S. Genesee
Burton, MI

RE: #59-15-200-019, R-1A Zoned.

FOR: To extend the variance to live in a mobile home while fire damaged home is repaired. Ordinance 19, Section 5.16, Item 7. (5 Votes)

Dennis Kinder, 1224 S. Genesee, Burton, MI, indicated the temporary variance that was granted, he did not expect to take this long and is here to request an extension on that variance. He handed out paperwork to the Board members. Mr. Kinder further indicated the hold-up is in the court system, as to the hardship, he had a house fire. The closest relatives are 150 miles away, the trailer they have now at the property is temporary, it has no foundation and is not intended to be permanent. He has spoke with the neighbors and there has been no complaints. He has kept the place up and presentable and if this variance is continued, he will keep the Board apprised of when his case will be settled.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., Burton, MI, said some time ago, Mr. Berry granted a variance for hardship on Maple Rd., and the applicant came back different times each year. She stated that the sole thing before you tonight is to provide someone a place to live.

Mr. LaDuke said this is a difficult case. He has received a number of complaints from people in the area, and he is not stating they are direct neighbors. On July 17, 1997 meeting, Mr. Kinder asked this Board for 6 months and possibly 3 more. It was 8 months granted by the Board. On April 7th, after the variance expired, Mr. Strasser sent Mr. Kinder a certified letter notifying him to remove the home. On April 23rd Mr. Kinder was issued a 10 day notice to remove it, and on May 5th a ticket was given to Mr. Kinder because he failed to comply with the 10 day notice. Mr. LaDuke said it is his understanding that on or around September 22, 1998, Mr. Kinder was ordered by Judge Hughes to come before this Board and get an extension or comply with the ordinance. He indicated the DPW knows there is a family living in it and it is a home. There has been a number of occasions that we have had complaints of the yard, high weeds, and in every case, we have differences of how the ordinance is interpreted. Mr. LaDuke spoke further, that he and Mr. Kinder have talked many times and he does not have the same philosophies on the interpretation. He knows Mr. Kinder has problems with his insurance company, but even without the fire, the house probably could not be repaired. He has a report from the building inspector who inspected it, and the fire is not the only reason that the house should not, or cannot be occupied at this time.

BOARD DISCUSSION:

Mr. Parker asked Mr. Kinder if he has made any arrangements to have the mobile home moved to a park or to another piece of property because it has been 16 months.

Mr. Kinder indicated the trailer moved in there on October 1, 1997. The variance was granted prior to that but he could not get anything in there prior to that.

Mr. Parker asked where he lived from June to October.

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Mr. Kinder indicated in tents on that property. He indicated the complaints Mr. LaDuke referred to was taken to court and he won.

Mr. Parker inquired as to any attempts to move the mobile home.

Mr. Kinder said he could not afford to do that and is in a financial bind. He went to DPW to get an application to renew this variance in April or May and it was refused. He is back here because of a judge's order.

Mrs. Layman asked why nothing has been done to the house.

Mr. Kinder said Judge Fullerton stated he cannot touch the house, tear it down or move anything out, and he has no control of it.

Mr. LaDuke asked if a court order has been provided.

Mr. Kalanquin said they have a law suit with the insurance company.

Mrs. Weatherford inquired regarding the suit.

Mr. Kinder said on May 26th, during the Memorial Day parade, he had a house fire while he was there at the parade. His insurance company for some reason refuses to pay and accused him of arson, why he does not know. To the best of his knowledge and the investigator's knowledge, it is determined as an accidental fire.

Mr. Parker said it seems they do not have enough information and would like the case post-poned until the next meeting so they can contact the attorney and Citizens Insurance. If this is a case that is going to take 2 or 3 years, then it is not something he is willing to give Mr. Kinder a variance for, but if it is something that will be resolved quickly, then he will lean towards another variance. Mr. Parker said for now, there is not enough information.

Mrs. Scott asked what Mr. Kinder he hears from his insurance company.

Mr. Kinder indicated they refuse to speak with him, he has to talk with their attorney. Mr. Cook representing the insurance company has withdrawn from the case, and is no longer representing the insurance company.

Mr. Kalanquin asked when his case is on the docket.

Mrs. Emma Kinder indicated they do not know because it was just filed.

Mr. Centilli asked if it was possible to obtain a letter from Judge Fullerton of why this house cannot be taken down.

Mr. LaDuke asked Mr. Kinder if his attorney can provide information and an update on the case. Mr. LaDuke said he originally talked with this attorney months ago when this was first happening, and he thought it might progress faster then what it has. He suggested Mr. Kinder's attorney could come to the next meeting.

Mr. Kinder indicated he will see if his attorney can attend the next meeting.

Mr. Centilli asked why the house was ordered not to be taken down.

Mr. LaDuke said it could be due to the pending lawsuit. He has not seen anything that says there is an order of such. He can have Mr. Kinder's attorney provide us with that order.

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Mr. Centilli said if the house is taken down and with the financial situation there is, they could never rebuild anyway.

Mr. LaDuke said it is his understanding that there is no intention of Mr. Kinder to re-hab the house. He wants to remove the house and build a new house there. The current house needs substantial rehabilitation, and is not salvageable at this time.

Mr. Kinder said the interior floor has collapsed.

Mr. Centilli asked if the foundation salvageable.

Mr. LaDuke said that is where the bulk of the problem is, the actual fire was in the basement. Mr. LaDuke said he was in that house the day of the fire, wood beams are not salvageable, wiring is outdated, the whole house is dis-repair. Mr. Kinder has indicated he wants to build a nice home at that location.

Kalanquin spoke of having Mr. Kinder's attorney present at the next meeting or a letter.

Mr. Parker said DPW needs to have contact with Judge Fullerton and Mr. Kinder's attorney so they have a better understanding of what the facts are on this case.

Mr. Kinder said if he could get an answer through the court of when it will be settled or not, then he can move on if settled in his favor, then he can tear the house down and rebuild. If not settled in his favor, he can tear the house down and move on. That is the dilemma he is in, he does not want to move on and leave everything behind knowing he could have rebuilt there.

BOARD ACTION AND/OR RECOMMENDATIONS:

Moved by Parker, seconded by Centilli to post-pone ZBA#98-55 until the next regular scheduled ZBA meeting. Motion carried, 7-0.

Mr. LaDuke instructed Mr. Kinder to have his attorney give him a call. Mr. LaDuke also indicated he will try to get the information from Judge Fullerton for the Board ahead of time.

The next regularly scheduled meeting of the Zoning Board of Appeals will be held on Thursday, November 19, 1998 at 6:00 P.M.

MEETING ADJOURNED AT 7:38 P.M.

JRA