

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**AGENDA
June 25, 2013
6:00 PM**

Planning and Zoning meeting room 1322 Hayes Road, Gaylord Michigan

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES: From September 25, 2012 meeting

CITIZEN COMMENT REGARDING ITEMS NOT ON THE AGENDA

PUBLIC HEARINGS: **ZBA13-001**

Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum
3917 Old 27 South
Gaylord, MI
#010-021-300-145-01

Legal Description:

COMM @ S 1/4 COR, TH N89DEG 40'30"W 1242.75', TH N03DEG 15'27"E 307.59' FOR POB
TH N03DEG 15'27"E 297.98', TH S86DEG 41'12"E 172.09', TH S02DEG 38'15"W 298.00' TH
N86DEG 41'12"W 175.32' TO POB. SEC 21, T30N-R3W. PARCEL A 06 SPLIT/COMBO
FROM 010-021-300-140-00

Nature of request: Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum is requesting a variance from the requirements of the Otsego County Zoning Ordinance, specifically Section 14/Schedule of Dimensions. The request is for a lot line variance in connection with a parcel division. The minimum setbacks in b2 zoning district are...

NEW BUSINESS:

1. **ZBA13-001: Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum**
A request for a lot line variance on the division of parcel #010-021-300-145-01.
2. Expiring Terms/Reappointment
 - a. Bono
 - b. McCarthy
 - c. Stults
3. Election of Officers

OLD BUSINESS:

1. Status of definition of Agriculture and allowance of building for retail trade
2. Status of Section 9.2.4 and Section 18.20 discrepancies between 10 acre and 40 acre requirement

(These two items were forwarded to the Planning Commission as requested)

COMMUNICATIONS:

ZBA MEMBER ITEMS:

ADJOURNMENT:

Otsego County Zoning Board of Appeals

Proposed Minutes for September 25, 2012/Regular Meeting

Call to Order: 6:00 pm by Chairperson Sagasser

Pledge of Allegiance

Roll Call:

Present: Chairperson Sagasser, Vice Chairperson Wagar, Mr. Alexander, Ms. Bono, Mr. Stults, Mr. Hoffman, Mr. Sumerix (*Alternate member to step in this meeting for Mr. McCarthy*)

Absent: Secretary McCarthy

Staff Present: Mr. Ferrigan, Ms. Boyak-Wohlfeil

Public Present: Brenda Cross

Approval of Minutes from July 31, 2012:

Mr. Alexander requested the following minute corrections: On page two (2) second (2nd) paragraph the addition of, "...building for retail trade as defined in Article 2 Section 2.2 of the Otsego County Zoning Ordinance." and paragraph five (5) "...be clarified as referenced above."; an addition under **New Business**, item two (2), '*Reappointment recommended to the Otsego County Board of Commissioners.*'; A reference to the minutes presented to the ZBA concerning an Auto Auction permitted in an AR zoning district and the deletion of an unnecessary motion to close nominations for elections.

Motion made to approve the minutes by Vice Chairperson Wagar as corrected; Seconded by Mr. Stults.

Motion approved unanimously.

Mr. Stults requested *ZBA/Land Use Procedural Discussion* be added to the agenda under **New Business**.

Chairperson Sagasser requested a motion approving the revised agenda.

Motion made by Mr. Stults; Seconded by Mr. Hoffman.

Motion approve unanimously.

Citizen Comment Regarding Items not on the Agenda:

Brenda Cross discussed her views on Otsego County subcontracting building inspectors/enforcement officers and stated she thought a County enforcement officer on staff would be better. She also did not agree with the fact complaints were kept anonymous.

Mr. Stults stated this issue had nothing to do with the Zoning Board of Appeals and was not within their jurisdiction to resolve. He also stated the Land Use Violation Enforcement Policy Mrs. Cross was referring to, was an administrative document and not part of the Zoning Ordinance.

Mr. Sumerix, Otsego County Commissioner, stated the issue had been brought to the Board of Commissioner's attention approximately a month earlier and had been addressed. A Commissioner's meeting had been held that morning and the issue discussed with the Finance Department. It was decided the hiring of an enforcement officer was not feasible at this time but the County would consider it in the future.

Chairperson Sagasser explained the Zoning Board of Appeals purpose was to interpret the Zoning Ordinance and Mr. Ferrigan, Land Use Services Director, was responsible for enforcing that Ordinance.

Otsego County Zoning Board of Appeals

Proposed Minutes for September 25, 2012/Regular Meeting

Mr. Ferrigan stated Section 22.4 Violations of the Zoning Ordinance gave his staff the authority to inspect and enforce. He also stated his records were open to the public and because the ordinance stated confidentiality on information pertaining to violation complaints, his name would show up as the filer the majority of the time.

Chairperson Sagasser thanked Mrs. Cross for presenting her information.

Public Hearing: ZBA12-001 Fam B Inc/Sign Variance
Applicant withdrew application.

Old Business:

- a. Definition of Agriculture and allowance of building for retail trade

Forwarded to Planning Commission/Postponed until next Planning Commission meeting

- b. Section 9.2.4 and Section 18.20 discrepancies between ten (10) acres and forty (40) acre requirement

Forwarded to Planning Commission/Postponed until next Planning Commission meeting

New Business:

1. ZBA12-001 Fam B Inc/Sign Variance
Applicant withdrew application.

2. Land Use Procedural Discussion

Mr. Stults stated all information sent to the Townships for review should be the same information that is sent to ZBA members. He also requested support for allowing the Townships the maximum time to examine all information presented before a Public Hearing is scheduled by Land Use Services.

Mr. Stults made the following motion; Seconded by Mr. Hoffman:

A motion that the Zoning Administrator be directed to schedule Public Hearings that require Township participation as required in Article 24 of the Zoning Ordinance and the contracts for which the townships provide funding to the Township's County wide zoning after the townships have responded or the time limit for a response has passed as stated in Article 24. Further the townships should be provided the same information to base their recommendation on as the Zoning Board of Appeals members are provided.

Mr. Alexander stated according to Article 24 Township Participation of the Zoning Ordinance it was already required of the Land Use Director to do just that.

Mr. Alexander stated according to ZBA by-laws, additions to the agenda needed a seven (7) day notice if an item required a motion and a vote.

Mr. Stults stated this was a directive to Mr. Ferrigan to follow *Article 24 Township Participation* so the ZBA could carry through with their responsibility and obligation to the Townships. This was a recommendation to the Zoning Board of Appeals in support of Mr. Ferrigan.

Otsego County Zoning Board of Appeals

Proposed Minutes for September 25, 2012/Regular Meeting

Mr. Ferrigan responded that it *was* his intent to follow the ordinance. He was looking for support from the Zoning Board of Appeals in following the time line stated in the Zoning Ordinance and so as not to be pressured by the applicant. He also stated the same information was sent to the Townships as to the ZBA members unless something was received last minute or after the Township's meeting.

Chairperson Sagasser stated it was the applicant's responsibility to get all information to Mr. Ferrigan in a timely fashion and the Zoning Board of Appeals would support him in his efforts.

After the discussion, Mr. Stults withdrew his motion.

Communications: None

ZBA Member Items: None

Adjournment: 7:45 pm

Christine Boyak-Wohlfeil, Recording Secretary

OTSEGO COUNTY
APPLICATION FOR PARCEL DIVISION
1068 Cross Street, Gaylord, MI 49735
Phone (989)731-7420 *Fax (989) 731-7429

Applicant Information:

Name: Covenant Hospitality Real Estate LCC
Address: 3917 Old US Hwy 27 South
City: Gaylord State: MI Zip Code: 49735
Phone: 989-732-9288 Fax: 989-732-9096

Property Owner Information:

Name: Jeffery S. + Cheryl L. Bennethum
Address: 3917 Old US Hwy 27 South
City: Gaylord State: MI Zip Code: 49735
Phone: 989-450-5427 Fax: 989-732-9096

Property Location:

Address: 3917 Old US Hwy 27 South
Parent Parcel Tax Code: # 010-021-300'-145-01
Township: Bagley T 30 N, R 3 W, Section 21

Division Information:

1. Zoning of Parent Parcel: B-2 ^{145Rear}
2. Size of Parent Parcel after Split: Width 224 Front Depth 172 Area 0.70 Acres
3. Size of Proposed Split: Width 74 Front 153 Rear Depth 175 Area 0.50 Acres
4. Number of Divisions Granted to New Parcel: _____
5. Adequate Permanent Access to New Parcel is provided by:
Frontage on an existing road: _____
Creation of a new public road: _____
Creation of a new private road or access easement: _____

6. Development Parcel Limits: (check all that apply)

Wetlands: _____ River or Lakefront: _____

Flood plain: _____ Slopes of more than 25%: _____

Is known or suspected to have an abandoned well, storage tank, or contaminated soils: _____

NOTE: Section 109(A) (1) Divisions less than 1 acre shall not have a building permit issued unless the site has Health Department approval for on-site water supply and sewage disposal, unless public water and sewer are available (as indicated on map/survey supplied) Section 109 (A) (2). The municipality and employees approving divisions of less than one acre are not liable if a building permit is not issued for the reasons set forth in this section.

**Zoning Board of Appeals
Non-Use Variance Applicant**



Applicant Information

Name: Covenant Hospitality Real Estate LLC Owner / Agent / Other interest
(circle one)
Address: 3917 Old US Hwy 27 South Gaylord, MI 49735
Phone: 989-732-9288 fax: 989-732-9096
Email address: info@bennethums.com

Property Owners Information: (if different from applicant)

Name: Jeffery S. + Cheryl L. Bennethum Owner / Agent / Other interest
(circle one)
Address: 3917 Old US Hwy 27 South Gaylord, MI 49735
Phone: 989-450-5427 fax: 989-732-9096
Email address: jeff@bennethums.com

Property Information:

Address/location: 3917 Old US Hwy 27 South Gaylord, MI 49735
Parcel Number(s): # 010-021-300-145-01
Zoning District: B-2 Current Use: Restaurant + Residence

Attachments: Please submit the following items with the application:

A Site Plan showing the following: Dimensions of property; Location and dimensions of any existing buildings and/or structures; any unique natural features such as lakes, rivers, streams, wetlands, steep slopes; location and dimensions of proposed building and/or structure.

Copy of deed(s) and accurate legal description of property.

You are encouraged to include photographs and illustrations to support your case.

You may use additional pages to explain any item that space does not allow.

Nature of Request: (clearly state the complete variance you are requesting)

The only reason that we are seeking a parcel division is to obtain SBA financing. As of about 3 weeks ago, the SBA will no longer lend on properties that include a residence. That is why we need to divide the parcel.

The only reason that we seek a lot line variance is because the distance between the house and the restaurant does not meet the stated requirement.

Land Use Services Use Only

File No.:

Fee:

Date Received:

Received by:

**Zoning Board of Appeals
Non-Use Variance Applicant**



**THE APPLICANT MUST DEMONSTRATE THE FOLLOWING CONDITIONS EXIST:
This section MUST be completed.**

Practical Difficulty: A practical difficulty exists on the subject site (such as exceptional narrowness, shallowness, shape or area; presence of floodplains; exceptional topographic conditions) and strict compliance with the Zoning Ordinance standards would unreasonably prevent the owner from using the subject site for a permitted use or would render conformity unnecessarily burdensome. Demonstration of a practical difficulty shall have a bearing on the subject site or use of the subject site, and not to the applicant personally. Economic hardship or optimum profit potential is not consideration for practical difficulty.

As stated, the only reason for the split is to obtain financing through the SBA at a substantially lower interest rate than I am currently paying. This will allow my business to survive and grow and hire more employees. We need a lot line variance because the restaurant and the resident are close together.

23.6.1. Public Welfare: Will granting this variance uphold the spirit of the ordinance, secure public safety, and uphold substantial justice to the property owners in the district. The Board must consider whether or not granting a variance will hinder Otsego County in achieving the very goals and objectives the ordinance is trying to accomplish. You should explain how your application is consistent with and does not violate the intent of the particular section(s) that apply to it; merely saying it does not is not enough.

Nothing will change on our property and it will not have any affect on Public welfare.

23.6.2. Substantial Justice: The variance would provide substantial justice by granting the property rights similar to those enjoyed by the majority of other properties in the vicinity, and other properties in the same zoning district. The decision shall not bestow upon the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity (such as the supply of light and air, significant increases in traffic, increased orders and increase in the danger of fire, or other activities which may endanger the public safety, comfort, morals or welfare).

We are not planning any changes to our property.

**Zoning Board of Appeals
Non-Use Variance Applicant**



36.6.3. Unique Situation: The demonstrated practical difficulty results from exceptional or extraordinary circumstances or conditions applying to the subject site at the time the Ordinance was adopted or amended which are different than typical properties in the same zoning district or vicinity. List in detail, the unique circumstances or conditions that apply to your property. Please explain here what the problem with your land.

We do not have any problems. We only need to separate the Residence from the Business to meet the new SBA requirements.

23.6.4. Not Self-Created: The conditions resulting in a variance request cannot be self-created and would have existed regardless of ownership of the property.

This condition is not self-created.

23.6.5. Minimum Variance Necessary: the variance shall be the minimum necessary to grant relief created by the practical difficulty. Please explain/list other alternatives and the reasons why these options are not feasible.

The minimum variance is all that we are requesting.

Compliance With Other Laws: The variance is the minimum necessary to comply with state or federal laws, such as farming activities protected by the "Right to Farming Act" or accessibility to meet the needs of individual with disabilities protected under the Americans with Disabilities Act.

Nothing will change with the structure or function of our property for business.

Certified True Copy
Otsego County Abstract Company; *tsk*

(Above space for recording purposes)

WARRANTY DEED

Robert C. Schlang and Ruth Schlang, his wife, whose address is 3917 S. Old 27, Gaylord, Michigan 49735, hereby conveys and warrants to Covenant Hospitality Real Estate, LLC, a Michigan limited liability company, whose address is 2360 Opal Lake Road, Gaylord, MI 49735, the following described premises situated in the Township of Bagley, County of Otsego, State of Michigan:

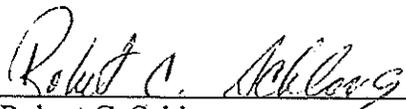
Legal description on Exhibit A attached hereto.

for the sum of Four Hundred Forty Thousand (\$440,000.00) Dollars subject to all easements, restrictions and encumbrances of records and subject to such liens and encumbrances as may have been attached or accrued through the acts or omissions of persons other than the Grantor, since April 14, 2006, the date of a certain Land Contract, in fulfillment of which this Deed is given.

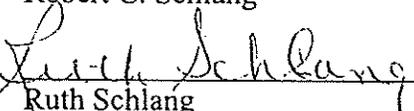
The property may be located within the vicinity of farmland or a farm operation. Generally accepted agriculture and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

The Grantor grants to the Grantee the right to make all legal division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

Dated: April 14, 2006.



Robert C. Schlang



Ruth Schlang

EXHIBIT A

Land situated in the Township of Bagley, Otsego County, Michigan, described as:

Parcel A:

A parcel of land on part of Government Lot 4, Section 21, T30N-R3W, Bagley Township, Otsego County Michigan, described as: Commencing at the South ¼ Corner of said Section 21; thence N89°40'30"W, 1242.75' along the South line of said Section 21; thence N03°15'27"E, 307.59' along the Easterly right-of-way line of Highway Old US 27 to the POINT OF BEGINNING; thence continuing N03°15'27" E, 297.28' along said right-of-way; thence S86°41'12"E, 172.09'; thence S02°38'15"W, 298.00'; thence N86°41'12"W, 175.32' to the Point of Beginning, contains 1.2 acres. Subject to Easements, Restrictions and Reservations of Record, Otsego County records.

Commonly known as: 3917 and _____ S. Old 27, Bagley Township, MI 49735
Tax Parcel No.

Blmfield.17995.50736.736329-1

State of Michigan
County of Otsego

The foregoing instrument was acknowledged before me this 14th day of April, 2006 by Robert C. Schlang and Ruth Schlang, his wife.

Terri S. Ledwick
Notary Public
Print Name: Terri S. Ledwick
Otsego County, Michigan
My Commission Expires: 03/18/2007
Acting in the County of Otsego

When recorded return to:

Send subsequent tax bills to:

Grantee

Grantee

Drafted by:
John B. Carlin, Jr., Esq.
Plunkett & Cooney, P.C.
38505 Woodward Avenue, Suite 2000
Bloomfield Hills, Michigan 48304

Tax Parcel # _____
Recording fee _____
State tax _____
County tax _____

AGREEMENT FOR MAINTENANCE AND OPERATION
OF
SHARED WELL AND SEPTIC SYSTEM

KNOW ALL MEN BY THESE PRESENTS, that Covenant Hospitality Real Estate, LLC, a Michigan Limited Liability Company, being the owner of Parcel A-1 as described upon the survey attached hereto (hereafter "Restaurant"), whose address is 3917 Old 27 South, Gaylord, MI 49735, and Covenant Hospitality Real Estate, LLC, a Michigan Limited Liability Company, as the owner of Parcel A-2 as described upon the survey attached hereto (hereafter "Residence"), whose address is 3917 Old 27 South, Gaylord, MI 49735, enter into this Agreement for Maintenance and Operation of a Shared Well and Septic System as of this ____ day of March, 2013.

WHEREAS, Restaurant and Residence are adjacent parcels that share a common Well and Septic System, which consists of a well, septic tank, pump, septic field, and all necessary pipes, electrical and other systems and equipment necessary for the operation of a well and septic system; and

WHEREAS, the Well and Septic System are located upon a portion of both Parcel A-1 and Parcel A-2, and provide water and septic services to both Restaurant and Residence, which water and septic services are essential for the continued operation and use of the physical facilities located upon Parcel A-1 and Parcel A-2; and

WHEREAS, Restaurant and Residence desire to provide for the continued operation and maintenance of said Well and Septic System, and to grant to each other reciprocal easements for the continued maintenance and operation of said Well and Septic System, and for the shared responsibility for all costs for said Well and Septic System:

NOW THEREFORE, Restaurant and Residence agree as follows:

1. Restaurant and Residence grant to each other a perpetual easement appurtenant across, over and upon Parcel A-1 and Parcel A-2 for the purpose of maintaining the existing Well and Septic System, and for all utilities and access to said Well and Septic System for any necessary maintenance, repairs and/or replacement to said Well and Septic System.
2. Restaurant and Residence acknowledge and agree that the cost of maintaining, repairing and/or replacing all or any portion of the Well and Septic System shall be paid 99% by Restaurant and 1% by Residence, said allocation being representative of the current and proposed future use of said Well and Septic System by Restaurant and Residence.

3. Restaurant and Residence shall work together to coordinate the repair, maintenance and/or replacement activities as necessary, in such manner as may be prudent and economical, and shall provide each other with reasonable notice prior to undertaking any repairs, maintenance or replacement.

4. If the replacement of the Well or Septic System shall be required by the applicable health department or municipal authority having the oversight of such matters, the Well and/or Septic System shall be relocated to such area within Parcel A-1 or Parcel A-2 as may be approved and recommended by said health department or municipal authority.

5. Any damage to the Well or Septic System that may be caused by the acts of Restaurant or Residence, or by their employees, guests or invitees, shall be repaired by the applicable party at its sole cost. All other repairs or replacements that may be required to maintain, repair or replace the Well and/or Septic System in a good operating condition shall be paid 99% by Restaurant and 1% by Residence.

6. The rights of Restaurant and Residence may not be assigned without the written consent of both parties, and neither party may undertake any acts that may unreasonably burden the Well and/or Septic System. Provided, however, that the rights of Restaurant and Residence herein shall pass to the future owners of Parcel A-1 and Parcel A-2.

7. This Agreement, and all of the rights and responsibilities set forth herein, shall be perpetual and shall run with the land as to both Parcel A-1 and Parcel A-2. The provisions of this instrument may be amended, but only with the written consent of the owners of Parcel A-1 and Parcel A-2.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day first written above.

PARCEL A-1:

COVENANT HOSPITALITY REAL ESTATE, LLC,
a Michigan Limited Liability Company

By: Jeffrey S. Bennethum
Its: Member

STATE OF MICHIGAN)
)SS
COUNTY OF OTSEGO)

The foregoing instrument was acknowledged before me this ____ day of March, 2013, by JEFFREY S. BENNETHUM, Member of Covenant Hospitality Real Estate, LLC, on behalf of the LLC, which LLC is the owner of Parcel A-1.

Notary Public:
Otsego County, Michigan
My commission expires:
Acting in the County of Otsego

PARCEL A-2:

COVENANT HOSPITALITY REAL ESTATE, LLC,
a Michigan Limited Liability Company

By: Jeffrey S. Bennethum
Its: Member

STATE OF MICHIGAN)
)SS
COUNTY OF OTSEGO)

The foregoing instrument was acknowledged before me this ____ day of March, 2013, by JEFFREY S. BENNETHUM, Member of Covenant Hospitality Real Estate, LLC, on behalf of the LLC, which LLC is the owner of Parcel A-2.

Notary Public:
Otsego County, Michigan
My commission expires:
Acting in the County of Otsego

Drafted by: _____ When recorded return to drafter.

Ronald J. Kirkpatrick
Kirkpatrick & DuBois PLC
213 East Main, Second Floor
Gaylord, MI 49735
989 732-2912

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**PUBLIC HEARING NOTICE
Tuesday May 28, 2013**

The Otsego County Zoning Board of Appeals will hold a public hearing on Tuesday, May 28, 2013 at 6:00pm in the Planning and Zoning Meeting room located at 1322 Hayes Road Gaylord, Michigan.

The purpose of the public hearing will be to obtain citizen comment on the following:

Nature of request: Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum is requesting a variance from the requirements of the Otsego County Zoning Ordinance, specifically Section 18.26 Nonconformities. The request is for a parcel division creating a separate lot for the existing residence.

Legal Description:

A parcel of land on part of Government Lot 4, Section 21, T30N R3W, Bagley Township, Otsego County Michigan, described as: Commencing at the South ¼ Corner of said Section 21; thence N8940'30"W, 1242.75' along the South line of Section 21; thence N03 15'27"E, 307.59' along the Easterly right-of-way line of Highway Old US 27 to the POINT OF BEGINNING; thence continuing N03 15'27E, 297.28' along said right-of-way; thence S86 41'12"E, 172.09; thence S02 38'15"W, 298.00; thence M86 41'12"W, 175.32' to the Point of Beginning, contains 1.2 acres.

Subject to Easements, Restrictions and Reservations of Record, Otsego County records.

Parcel #69-010-021-300-145-01 Street Address: 3917 Old 27 South Gaylord, MI

All citizens are welcome to attend the meeting or provide written comment. If written comments are provided the comments must be received at the Otsego County Land Use Services Office by noon (12:00 pm) the day of the meeting.

Any citizen who has questions regarding this application or needs assistance to attend this meeting should contact the Director of Land Use Services at (989) 731-7420.

OTSEGO COUNTY ZONING BOARD OF APPEALS

Meeting Postponed

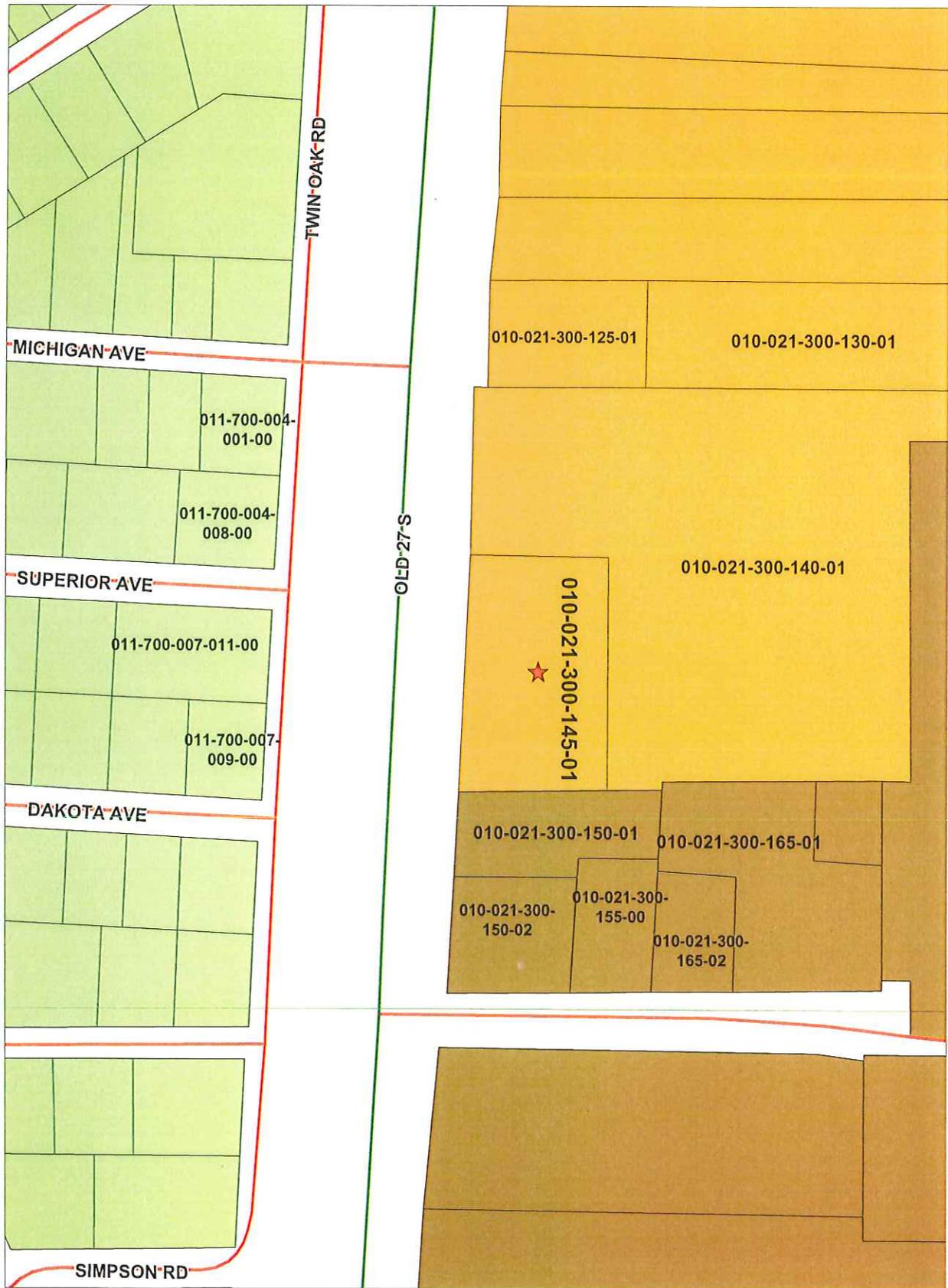
The Otsego County Zoning Board of Appeals case #ZBA13-001 for Covenant Hospitality Real Estate LLC/Jeffery & Cheryl Bennethum has been postponed from May 28, 2013 until June 25, 2013.

All citizens are welcome to attend the meeting or provide written comment. If written comments are provided the comments must be received at the Otsego County Land Use Services Office by noon (12:00 pm) the day of the meeting.

Any citizen who has questions regarding this application or needs assistance to attend this meeting should contact the Director of Land Use Services at (989) 731-7420.

Parcels notified of Public Hearing/May 28, 2013
Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum

010-021-300-125-01	Harley's Bogie Properties
010-021-300-130-01	David C Matelski Et Ux
010-021-300-140-01	Robert C Schlang
010-021-300-150-01	Edward Krol
010-021-300-150-02	Jeremy D Hoogerhyde
010-021-300-155-00	Lakeview Quality Tool Inc
010-021-300-165-01	Andrew S & Colleen A Kujawa
010-021-300-165-02	John K & Dawn B Cottrell
011-700-004-001-00	Daniel H & Laura Stafford/Benjamin B Huey Et Ux
011-700-004-008-00	Richard D & Janet S Lewandowski
011-700-007-009-00	Robert C Schlang
011-700-007-011-00	Steven A Sulkey



Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum
 010-021-300-145-01/3917 Old 27 South Gaylord, MI
 Zoned B2/General Business



Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum
010-021-300-145-01/3917 Old 27 South Gaylord, MI

**OTSEGO COUNTY
ZONING BOARD OF APPEALS
CASE NO. ZBA13-001**

STAFF REVIEW

APPLICANT: Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum

PUBLIC HEARING DATE: May 28, 2013

PROPERTY DESCRIPTION

The property of the Applicant, described as:

A parcel of land on part of Government Lot 4, Section 21, T30N R3W, Bagley Township, Otsego County Michigan, described as: Commencing at the South ¼ Corner of said Section 21; thence N8940'30"W, 1242.75' along the South line of Section 21; thence N03 15'27"E, 307.59' along the Easterly right-of-way line of Highway Old US 27 to the POINT OF BEGINNING; thence continuing N03 15'27E, 297.28' along said right-of-way; thence S86 41'12"E, 172.09; thence S02 38'15"W, 298.00; thence M86 41'12"W, 175.32' to the Point of Beginning, contains 1.2 acres.

Subject to Easements, Restrictions and Reservations of Record, Otsego County records.

Parcel #69-010-021-300-145-01

Street Address: 3917 Old 27 South Gaylord, MI

APPLICATION

The Board having considered the Application, a public hearing having been held on _____ 2013 after giving due notice as required by law, the Board having heard the statements of the Applicant, the Applicant's attorney and agents, if any, the Board having considered letters submitted by members of the public and comments by members of the public, if any, the Board having considered _____ Exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDING OF FACT

1. The property is owned by: Covenant Hospitality Real Estate LLC/Jeffrey and Cheryl Bennethum *Exhibit #6*
2. The property is located in Bagley Township, Otsego County. *Exhibit #3, 6*
3. The property is located at 3917 Old US Hwy 27 South Gaylord, MI. *Exhibit #3, 6*
4. The property is zoned B2/General Business. *Exhibit #5*
5. The property owners are requesting a variance for setbacks in a parcel division. *Exhibit #1, 2*
6. The requirements of Article 24/Township Participation have been met. *Exhibit #9*
7. The public hearing was published in the local paper as required by the Michigan Zoning Enabling Act. *Exhibit #10*
8. All property owners within three hundred feet (300') have been notified of the variance request. *Exhibit #11*
9. All required fees have been collected by Otsego County Land Use Services. *Exhibit #8*
- 10.

SPECIFIC FINDING OF FACT

FINDING OF FACT UNDER ARTICLE 11 B2/GENERAL BUSINESS

1. The Zoning Board of Appeals finds that restaurants are a permitted use in the B2 zoning district. *Exhibit #4, 5*
2. The Zoning Board of Appeals finds that existing residences are a permitted use in the B1 zoning district. *Exhibit #4, 5*

FINDING OF FACT UNDER ARTICLE 14/SCHEDULE OF DIMENSIONS

1. The Zoning Board of Appeals finds the minimum lot area in a B2 zoning district is ten thousand (10,000) square feet. *Exhibit #4*
2. The Zoning Board of Appeals finds the minimum front setback in a B2 zoning district is thirty (30) feet taking into consideration *Note e*: Off-street parking may be permitted in the front yard, except that a ten (10) foot wide landscaped buffer is maintained between the front lot line or right-of-way line, and the parking area. *Exhibit #4*
3. The Zoning Board of Appeals finds that the minimum side setback in a B2 zoning district is ten (10) feet taking into consideration *Note c*: On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the residential side in B1, B2 & B3 Districts. *Exhibit #4*
4. The Zoning Board of Appeals finds that the minimum rear setback in a B2 zoning district is twenty (20) feet taking into consideration *Note a*: Lots within five hundred (500) feet of lakes, ponds, flowages, rivers, streams: See Article 15/LOTS NEAR WATER *Note d*: Loading and unloading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per linear foot of front building wall. Loading space shall not be counted as required off-street parking. Loading zones may be located in other non-required yards if screened or obscured from view from public streets and residential districts and *Note f*: No building shall be placed closer than forty (40) feet to the outer perimeter of such district or property line when said use abuts a residential district boundary. *Exhibit #4*
5. The Zoning Board of Appeals finds that the minimum lot width in a B2 zoning district is one hundred (100) feet taking into consideration *Note k*: Specific allowable uses have greater minimum lot widths as required in the Zoning District allowable use lists. *Exhibit #4*
6. The Zoning Board of Appeals finds the: Minimum front, side and rear setbacks and maximum lot coverage modifications of up to twenty-five percent (25%) may be approved by the Zoning Administrator for nonconforming lots, as described in Article 18.26.1 and 18.26.2. *Exhibit #4*
7. The Zoning Board of Appeals *Exhibit #*
8. The Zoning Board of Appeals *Exhibit #*
9. The Zoning Board of Appeals *Exhibit #*
10. The Zoning Board of Appeals *Exhibit #*

FINDING OF FACT UNDER ARTICLE 18 SPECIFIC REQUIREMENTS FOR CERTAIN USES
SECTION 18.26 NONCONFORMITIES

1. The Zoning Board of Appeals finds that **Section 18.26.1 INTENT** states:

It is recognized that there exists within the districts established by this Ordinance and/or by subsequent amendments, lots, buildings, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

It is the intent of this Ordinance to permit these legal nonconforming lots, buildings, structures, or uses to continue until they are removed but not to encourage their survival. Minimum front, side and rear setbacks, minimum lot width, and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator upon a written finding that such a modification will have no adverse impact on the use or development of adjoining lots or threaten the public health or safety in any way. *Exhibit #4*

2. The Zoning Board of Appeals finds that **Section 18.26.2 NONCONFORMING LOT** states:

A nonconforming lot is a lot that the boundaries of which are recorded in a plat, deed or land contract executed and delivered prior to the effective date of this Ordinance and the width, depth, and/or area of which does not meet the minimum dimensional requirements of the District in which it is located.

A single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the District; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the District in which such lot is located. Minimum front, side and rear setbacks, and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator. Modifications greater than twenty-five percent (25%) may be obtained only by approval of the Board of Appeals.

Where two (2) or more adjoining nonconforming lots are in existence under single ownership, such lots shall be used only in combinations which most closely satisfy the minimum lot size standards prescribed for the District in which said lots are located.

For definition purposes, "most closely" shall apply in situations where, for example, two (2) lots combined do not meet the minimum, but a third (3) lot would exceed the minimum by a greater amount than two (2) lots would fall short; hence, only two (2) lots need to be combined in this case. *Exhibit #4*

3. The Zoning Board of Appeals finds that **Section 18.26.3 NONCONFORMING USE OF LAND** states:
Nonconforming uses of land may be continued, so long as they remain otherwise lawful, subject to the following provisions:

- 18.26.3.1.1 No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance. *Exhibit #4*

4. The Zoning Board of Appeals finds that **Section 18.26.5 NONCONFORMING USES OF STRUCTURES AND LAND** states:

Nonconforming uses of structures and land may be continued so long as they remain otherwise lawful, subject to the following provisions:

- 18.26.5.1 No such nonconforming use of land or building shall be moved in whole or in part to any other portion of the lot or parcel occupied, other than to remove or lessen nonconforming conditions. *Exhibit #4*

5. The Zoning Board of Appeals finds *Exhibit #*
6. The Zoning Board of Appeals finds *Exhibit #*

FINDING OF FACT UNDER ARTICLE 23/BOARD OF APPEALS

1. The Zoning Board of Appeals finds that **Section 23.6 DIMENSIONAL OR NON-USE VARIANCE** states:

Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve "practical difficulties" within the meaning of this Ordinance, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears that there is clear and convincing evidence that all the following facts and conditions exist:

- 23.6.1 That the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district.

- 23.6.2 That the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district.

23.6.3 That special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district.

23.6.4 That the special conditions or circumstances are not the result of actions by the applicant or predecessor in title.

23.6.5 That the requested variance is the minimum variance necessary that will make possible the reasonable use of the land.

STAFF RECOMMENDATION

It is the recommendation of the Land Use Services Director to abide by the language set forth in the Otsego County Zoning Ordinance.

Bagley Township

Otsego County Michigan

PO Box 52
Gaylord, Michigan 49734

Subject: Report of Public Hearing Results and Recommendation

Case: ZBA 13-001, Jeff and Cheryl Bennethum,
Covenant Hospitality LLC

Date and Location:: April 15, 2013, Bagley Township Hall,
7:00 PM

Noticed: April 6, April 13, 2013, Gaylord Herald
Times (Affadavit)

Meeting opened at 7:00PM by Arndt, case announced to attendees. The meeting was announced as being recorded. Notes here are paraphrased from the discussion and commission conclusions at the hearing. The tape will be available to interested parties for 90 days after the ZBA hearing and then destroyed.

Members Present: Arndt, Schwandt, Trigger, Burkett

Mr. Bennethum was invited to describe the reason for his appeal to the ZBA.

Mr. Bennethum indicated that he is attempting to obtain an SBA loan to lower his payments owing to current bank only based financing, which has been in place since he opened the restaurant. If the loan could be refinanced with the SBA his cash flow to principal and interest would be reduced by \$30,000 per year. The problem is that the SBA would not allow the home to be included in the refinancing. Petitioner shared the surveys he had prepared separating the two properties. The house split from the restaurant would remain with the garage and shed with sufficient land area to qualify, but the frontage on Old 27 would be less than 100 feet and the setback from the house or from the restaurant would be less than that required.

Petitioner indicated that the house appeared to be constructed about 1935 to 1940 from the plumbing and the restaurant about 1944 to 1947. At least one addition to the restaurant adjacent to the house was permitted in about 1949 or 50 to expand the kitchen, which created the present setback difficulty.

Petitioner indicated that the only reason for the split was the accommodation of the SBA loan. He further stated that the business was closed when he purchased it and he now has 18 employees on the staff, some from the former staff and some new employees.

Petitioner provided copies of the surveys prepared to the board members and answered several questions. He acknowledged the problem with the setback and the street access and indicated that the garage which would remain with the house site is used by the family now for car storage and that will not change.

Petitioner concluded his comments.

The meeting was opened to public comments. None were forthcoming.

The meeting was closed to public comments.

Discussion among the board members began. In reviewing the survey, all members understood the setback and frontage issues clearly.

Member Trigger questioned the circumstance which allowed the breach of current zoning and the board noted that the various improvements were completed some 20 years before the county first adopted zoning. Although the improvements were not illegal at zoning adoption, the grandfathered status does not permit modifications to a non conforming use, but may allow certain modifications which reduce the non conformity.

Safety of the respective buildings was discussed. Mr. Bennethum indicated that he has maintained insurance on both structures with no difficulty and he anticipated that the insurances would be maintained if the split occurs.

Questions of side setback were addressed on the south side and it appears that the setback is adequate between the subject improvements and the adjacent shop building.

Clearly the east setback to the restaurant and the west setback to the house are inadequate. There appears to be no way to cure the problem without complete or partial demolition of one or the other structures.

Given the B-2 zoning, the improvements will be allowed in the commission's opinion, whether the split occurs or not. B-2 requirements in site size are 10,000 square feet and R-1 residential requires 20,000. Petitioner intends to provide 20,000 square feet for the separate dwelling as required in R-1. B-2 includes B-1 uses which include dwellings.

The reconfigured site supporting the dwelling will have less than 100 feet of frontage at the road. This is not a curable situation unless the frontage requirement receives a 25% waiver as would be allowed under the setback provisions of 18.26.1 and .2.

The commissioners examined the well and septic sharing agreement executed to provide services for both properties insuring services to the dwelling if the split and an effective split in the form of a long term lease occurs.

Ordinance testing and discussion (from tape recording, paraphrased).

Section 26.6.1: Will granting this variance be detrimental to the public welfare or will it injure other properties.

Commissioner consensus: No. This permanent or temporary variance will not injure the rights of other property owners, even if the property owners of the intended splits were disinterested parties. There remains sufficient parking and garage space for the dwelling and, separately, the restaurant and both properties are protected by a formal access to sewer and water services. Having a narrower than allowed front site dimension, given the visibility from the road point of access will not create a safety hazard to egress/ingress traffic. Since the ZBA is not a precedent creating body, allowing this variance will not create a body of decisions that could be relied upon for the appeal of others.

Section 26.6.2: Will the variance be necessary for the owner(s) to receive a right available to others that will not be available to them in this zoning district?

Commissioner consensus: Yes. Simple SBA financing is typically available to most small businesses regardless of the risk profile presented. Recent changes in the SBA rules preclude the inclusion of the house in this real estate assemblage, excluding the Bennethum property from consideration. That has not been the case for many years but the law changed in the past 90 days creating this issue. Other types of ancillary structures and outbuilding are allowed under SBA rules, but not single family homes as ancillary properties. Had the petitioner lied about the use of the building (made it a “prep” kitchen or “storage” building or “card room” there would be no problem. The ruling itself creates the hardship which Bagley Township suggests could be mitigated by the variance with varying conditions.

26.6.3: Are there unique circumstances or special conditions that are not the result of actions by the applicant or predecessor in title?

Commissioner consensus: Yes with respect to unique circumstances and no to conditions created by distant predecessors in title.

This restaurant building was created about 1944 and expanded with a new kitchen in about 1947. The house was already in place, having been constructed perhaps 8 to 12 years before that. True, the situation was self created—but clearly at least 20 years before county zoning was created and came into effect. There were building inspectors as far back 1936, so somewhere an inspector from the county thought the setback—for all of the sanitary and fire protection concerns we have today—was acceptable as created, including the kitchen expansion.

The catch 22 reminds us of the circumstance in other county where an individual discovered an ancient wall adjacent to an old embattlement earthwork. Adjacent and on his property meant no further improvement which might impact the artifact, so the owner tried to split his property and give the artifact to a non profit entity to free up his home for an addition.

The site could not be split because it would not meet minimum site size for the remaining home site. In addition, this situation was created by two predecessors in title: The site developer (unknowingly) 20 years ago and the French who claimed the original land grant after the French and Indian War.

We believe that such circumstances where distant owner and developers created something that was either ignored or allowed with the best understandings of the time it was allowed should be given serious consideration. There are many things that force compliance with current regulations that are practical and even compelling in light of best practices that have developed over time—but Bagley Township does think that applying predecessor in title consideration should not be a yes or no decision paradigm applied here.

26.6.5: Is the variance for the driveway access and the setback the minimum necessary to make possible the reasonable use of the land through the SBA financing?

Commission consensus: Yes.

Discussion before the vote. We are not immune to the impact of variances and their careless use on the one hand and unreasonably restrictive applications in others. The bias in Section 26 is to say no to most applications and we understand that and the source of the narrative which became law. We craft a recommendation that preserves the restrictions in the ordinance but allows the citizen's financing to go forward, thus:

Motion by Schwandt, Seconded by Trigger

That the variance be approved with conditions. That the separated parcels each be recorded with a permanent title restriction on each making the house and the restaurant parcels ineligible for sale as separate entities without the sale of the other.

19:42 Vote: All in favor, non opposed.

Discussion on the condition for benefit of the petitioner. The effect of a foreclosure of one parcel encumbers the other with that action. This enhances the appeal to the SBA (more collateral) and assures the ZBA that the property may be split now for the convenience of the financing transaction at hand, but will never be sold separately regardless of financing in place.

Conventional financing obtained in the future will not be affected either way since benefits demanded by the SBA will also accrue to other entities extending financing.

The commissioners were influenced by other factors as recommending bodies to the board. Bennethum's Northern Inn was formerly Schlang's Bavarian Inn which was closed at acquisition by the Bennethums. Since reopening, the owners have stood the business up to a sustainable level, hired 17 employees and are successful, responsible, tax paying citizens. While these factors may not be discovered in Section 26 of our zoning regulation, reasonable assistance to employers to foster employment is essential to the survival of our community.

Respectfully Submitted,

Kenneth R. Arndt
Chairman
Bagley Township Planning Commission

Approved for the Board:

William Giles
Supervisor



DECLARATION OF DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTION made this ____ day of June, 2013, by and between Covenant Hospitality Real Estate, LLC, a Michigan Limited Liability Company, being the owner of Parcel C as described upon the survey attached hereto (hereafter "Restaurant"), whose address is 3917 Old 27 South, Gaylord, MI 49735, and Covenant Hospitality Real Estate, LLC, a Michigan Limited Liability Company, as the owner of Parcel D as described upon the survey attached hereto (hereafter "Residence"), whose address is 3917 Old 27 South, Gaylord, MI 49735.

RECITALS:

- A. Restaurant and Residence are adjacent parcels currently held by one owner, under a single Tax Parcel Number, upon which were constructed certain improvements located in close proximity to each other; and
- B. Current zoning requirements do not permit the separation of said Parcels C and D, by reason of the location of the improvements upon said parcels; and
- C. Restaurant and Residence desire to separate said Parcels C and D so as to permit a mortgage to be imposed upon one but not both parcels; and
- D. Restaurant and Residence acknowledge that until such time as the improvements upon one or both Parcels C and D are moved or removed, so as to meet the then-existing zoning requirements, Parcels C and D are to remain under common ownership:

NOW THEREFORE, Restaurant and Residence agree that the following shall bind the owners of Parcels C and D, as follows:

Until such time as the location of any improvements located upon Parcels C and D shall meet all then-existing zoning requirements, Parcels C and D shall remain under the ownership of a single person or entity and shall not be under separate ownership. Any conveyance that shall attempt to sever the ownership of Parcels C and D, so long as the location of the improvements upon said parcels shall not meet the then-existing zoning requirements, shall be void and of no effect.

This restriction shall be appurtenant to Parcels C and D, and shall run with the lands.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day first written above.

Exhibit #14

EXHIBIT LIST FOR ZONING BOARD OF APPEALS

CASE NO. ZBA13-001

- Exhibit #1: Application for non-use variance submitted by Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum dated 3.13.2013
- Exhibit #2: Application for parcel division submitted by Covenant Hospitality Real Estate LLC/Jeffrey & Cheryl Bennethum dated 3.13.2013
- Exhibit #3: Certificate of Survey by Wade Trim for Jeff Bennethum
- Exhibit #4: Otsego County Zoning Ordinance 2003-02 updated April 2013
- Exhibit #5: Otsego County Zoning Map dated July 2007
- Exhibit #6: Warranty Deed recorded in Otsego County
- Exhibit #7: Agreement for Maintenance and Operation of Shared Well and Septic System
- Exhibit #8: Receipt #01300276 dated 3.14.2013
- Exhibit #9: Letter for Township Participation sent to Bagley Township dated 3.22.2013
- Exhibit #10: Public Hearing Notice/Public Hearing Notice Postponement
- Exhibit #11: List of parcels notified of Public Hearing w/Maps
- Exhibit #12: ZBA13-001 Staff Review
- Exhibit #13: Response letter from Bagley Township dated 4.15.2013/Received 5.20.2013
- Exhibit #14: Covenant Hospitality Real Estate LLC/Deed Restriction Document/Received 6.6.2013
- Exhibit #15:

The following recommendations were adopted by the Otsego County Board of Commissioners:

The Otsego County Planning Commission and the Otsego County Zoning Board of Appeals are recommending that **Section 9.2.4** be amended to contain matching language found in **Section 18.20.2**.

Recommended new language:

9.2.4 Livestock auction yards with accessory buildings on a minimum **forty (40) acre** site size, provided that there is no nuisance imposed upon the surrounding farms or dwellings.

The Otsego County Planning Commission and the Otsego County Zoning Board of Appeals are recommending the following to clarify that a land owner is allowed a maximum of four thousand (4000) square feet of accessory buildings.

SECTION 18.1 ACCESSORY BUILDINGS

Recommended corrected language:

18.1.3.1 Where the lot is larger than the minimum size for that zoning district, the total accessory building square footage may be increased proportionally to the lot size in the following manner: twenty-five (25) square feet increase in allowable accessory buildings for every one thousand (1,000) square feet that the lot exceeds minimum lot size, **up to a maximum of four thousand (4,000) square feet.**