Otsego County Zoning Board of Appeals

Approved Minutes for June 25, 2013/Regular Meeting

Call to Order: 6:00 pm by Chairperson Sagasser

Pledge of Allegiance

Roll Call:

Present: Chairperson Sagasser, Vice Chairperson Wagar, Secretary McCarthy, Mr. Alexander, Ms. Bono, Mr. Stults, Mr. Hoffman, Mr. Sumerix */Alternate Member*
Absent: None

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

Others Present: John Burt, Otsego County Administrator, Jeff Ratcliffe, Otsego County Economic Alliance Director

Public Present**:** Annette & ThomasYasin, Mary Ellen & John Gerald Gleason, Larry & Pat Beckett, John & Lou Anne Pisha, Norman & Nancy Beliger, Nora Corfis, Ron Hees, Ken Arndt, Bagley Township Planning Commission Chairperson, Bill Giles, Bagley Township Supervisor and Ron Kirkpatrick, the Bennethum's Attorney

Approval of Minutes from September 25, 2012:

Motion made to approve the minutes as written by Vice Chairperson Wagar; Seconded by Ms. Bono

Motion approved unanimously.

Citizen Comment Regarding Items not on the Agenda: None

Public Hearing: **ZBA13-001**
Covenant Hospitality Real Estate LLC/Jeff & Cheryl Bennethum
3917 Old 27 South
Gaylord, MI
#010-021-300-145-01

Legal Description:
COMM @ S1/4 COR, TH N89°40'30"W 1242.75FT, TH NO3°15'27"E 307.59FT FOR POB, TH N03°15'27"E 297.98FT, TH S86°41'12"E 172.09FT, TH S02°38'15"W 298.00FT, TH N86°41'12"W 175.32FT 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/Jeff & Cheryl Bennethum is requesting a variance from the requirements of the Otsego County Zoning Ordinance, specifically Section14/Schedule of Dimensions. The request is for a lot line variance in connection with a parcel division.

Public Hearing: Open 6:04 pm

Mr. Bennethum stated he owns and has operated Bennethum's Restaurant since 2006. He and his wife Cheryl live in the residence behind the restaurant and they and their children run the family business.
Mr. Bennethum sought refinancing through a program from the Small Business Administration (SBA). After being preapproved by MBank of Gaylord and the SBA and financing was set to go, Mr. Bennethum was notified a SBA finance ruling had taken place. The residence could not be included as part of the financing. Mr.

Bennethum hired Wade Trim for a survey and contacted Jason Woodcock, Bagley Township Assessor concerning a parcel division. He was told the parcels did not meet the zoning ordinance requirements. Mr. Bennethum is requesting a lot line variance in connection with his parcel division to obtain his financing.

Chairperson Sagasser opened the floor for public comment.

Mr. John Gleason, Otsego Lake Township full time resident since 1998, stated he volunteered his consulting services to Mr. Bennethum and praised the restaurant's food and overall dining experience. He was in support of the variance.

Mr. Ken Arndt, Bagley Township Planning Commission chairperson, stated the township planning commission's approval of the variance was based on a Declaration of Deed Restriction encumbering both parcels regardless of what happens to either piece of property. He stated the parcels could never be separated and was in support of the variance.

Mr. Bill Giles, Bagley Township Supervisor, stated the township board agreed with its planning commission's recommendation and also was in support of the variance.

Mr. Jeff Ratcliffe, Otsego County Economic Alliance Director, presented a letter to the Zoning Board of Appeals addressing the ordinance issues and pointed out this was a paper transaction separating the parcels but also binding them back together. He stated he was in support of the variance.

Mr. Ron Hees, as president of Michaywe Owners Association in 2000, stated he had hired Jeff Bennethum as a general manager and Mr. Bennethum and his family helped reopen the restaurant and pool and get the golf course back in shape. He vouched for the character of the Bennethum family and was in support of the variance.

Mr. Tom Yasin, full time resident of Otsego County since 1994, stated Bennethum's Restaurant had much to offer the County. He was in support.

Public Hearing: Closed 6:24 pm

New Business:

1. **ZBA13-001**
   Covenant Hospitality Real Estate LLC/Jeff & Cheryl Bennethum
   3917 Old 27 South
   Gaylord, MI
   #010-021-300-145-01

A request for a lot line variance in connection with a parcel division.

Mr. Alexander asked for the specific dimensions of the variance requested. Mr. Schlaud stated according to Article 14/Schedule of Dimensions, the setback in a B2 zoning district for the front is thirty (30) feet, side is ten (10) feet and rear is twenty (20) feet but the Zoning Administrator could approve a twenty-five percent (25%) modification for nonconforming lots.

Mr. Stults stated it was not the ZBA's responsibility to determine the exact variance being requested. The application should have stated the variance they were asking for.

Chairperson Sagasser referred to the information given and stated it was fairly simple to figure out.

Mr. Schlaud stated there was a setback deficiency for both parcels, Parcel A1 and Parcel A2. According to the survey, there is 15.08 feet between the restaurant and residence. With the proposed property line division, there is 7.54 feet setback for each parcel. A variance of 12.46 feet for Parcel A1 and a variance of 12.46 feet for Parcel A2 would be needed.

Chairperson Sagasser stated two (2) variances would be needed, one (1) for the restaurant (Parcel A1) and one (1) for the residence (Parcel A2). He asked Mr. Bennethum if he was requesting two variances of 12.46 feet each and Mr. Bennethum stated yes.

Mr. Stults stated another variance of 26.04 feet would be needed for the minimum lot width. According to the Schedule of Dimensions the minimum lot width for the B2 zoning district is one hundred (100) feet. Parcel A2 has a lot width of 73.96 feet. He also stated the width to depth of the lot should be considered and that the zoning ordinance states a nonconforming lot cannot be created.

Ms. Bono stated the Declaration of Deed Restriction prevents the parcels from being sold separately and there was no way the nonconforming parcel could be split into two (2) conforming lots.

Chairperson Sagasser stated a third variance would be needed. He asked Mr. Bennethum if he was requesting a lot width variance of 26.04 feet for Parcel A2 and Mr. Bennethum stated yes.

Chairperson Sagasser requested the letter from Jeff Ratcliffe, Otsego County Economic Alliance Director be added to the list of exhibits.

Mr. Alexander asked that the public comment be added as well.

EXHIBIT LIST for CASE #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: Otsego County Economic Alliance Letter dated *6.25.2013*/Jeff Ratcliffe, Director
Exhibit #16: Public Comments/Six (6) in support of Mr. Bennethum*/Gleason, Arndt, Giles, Ratcliffe, Hees, Yasin*

The following Finding of Fact were presented and amended:

GENERAL FINDING OF FACT

1. The property is owned by Covenant Hospitality Real Estate LLC/Jeff & 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 12.46 foot variance for the rear setback on Parcel A1/C, a 22.46 foot variance for the front setback on Parcel A2/D and a dimensional variance of 26.04 feet on Parcel A2/D. *Exhibit #1, 2, 3*
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. The 'Declaration of Deed Restriction' is a legal document of permanent restrictions encumbering both parcels: Parcel A1/Parcel C: Restaurant and Parcel A2/Parcel D: Residence. *Exhibit #14*

SPECIFIC FINDING OF FACT

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 B2 zoning district. *Exhibit #4, 5*

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 that 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 front 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*

Mr. Hoffman questioned whether one of the setbacks was a side lot line or a front lot line.

Mr. Stults clarified it as a front lot line reading the definition from the Otsego County Zoning Ordinance.

Chairperson Sagasser stated one of the variances would need to be changed to *'a 22.46 foot variance from the front setback of Parcel A2*'instead of 'a 12.46 foot variance from the side lot line of Parcel A2'. He asked Mr. Bennethum to amend his variance request to include the change. Mr. Bennethum did so.

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 district 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 INTENT** 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 minimum dimensional requirements of the District in which it is located.

   A single family-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 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 (3rd) 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 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*

Motion made by Mr. Alexander to approve the General Finding of Fact and Specific Finding of Fact as written and amended; Seconded by Mr. Hoffman.
Roll call vote:
Sagasser-Yes, Wagar-Yes, McCarthy-Yes, Alexander-Yes, Bono-Yes, Stults-Yes, Hoffman-Yes
Motion approved unanimously.

Mr. Stults reminded everyone that a variance stays with the property forever and also that the standard is ***'practical difficulty'***. He read the definition from the Zoning Ordinance.

ARTICLE 23/BOARD OF APPEALS

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.

The following were read and voted on by roll call vote:

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.

Bagley Township provided written support of the variance request and all six (6) public comments made during the hearing were in favor of granting the variance.

Motion made by Mr. Alexander to approve Section 23.6.1; Seconded by Vice Chairperson Wagar:
Roll call vote:
Sagasser-Yes, Wagar-Yes, McCarthy-Yes, Alexander-Yes, Bono-Yes, Stults-Yes, Hoffman-Yes
Motion approved unanimously.

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.

Chairperson Sagasser read Bagley Township's response stating that the SBA's new ruling excluded the applicant from consideration and Mr. Sagasser concurred.

Motion made by Ms. Bono to approve Section 23.6.2; Seconded by Vice Chairperson Wagar:
Roll call vote:
Wagar-Yes, McCarthy-Yes, Alexander-Yes, Bono-Yes, Stults-No, Hoffman-No, Sagasser-Yes
5-Yes
2-No
Motion approved.

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.

Chairperson Sagasser stated the use of the Bennethum's property has been the same for years and the SBA's recent ruling was a unique circumstance.

Motion made by Mr. Stults to approve Section 23.6.3; Seconded by Mr. Hoffman:
Roll call vote:
McCarthy-Yes, Alexander-Yes, Bono-Yes, Stults-Yes, Hoffman-Yes, Sagasser-Yes, Wagar-Yes
Motion approved unanimously.

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

Chairperson Sagasser stated the special circumstances were certainly not the result of the applicant but of the SBA's requirements.

Ms. Bono stated the property was of a nonconforming nature since way back when.

Motion made by Vice Chairperson to approve Section 23.6.4; Seconded by Secretary McCarthy:
Roll call vote:
Alexander-Yes, Bono-Yes, Stults-No, Hoffman-No, Sagasser-Yes, Wagar-Yes, McCarthy-Yes
5-Yes
2-No
Motion approved.

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

Chairperson Sagasser stated in his opinion this was the minimum variance possible and with the deed restrictions added to the property, he felt the requirements were met.

Mr. Stults stated he did not agree. The use of the land would be the same, maybe financing would not be available but the variance would have nothing to do with the use of the land changing.

Mr. Alexander stated he thought this *was* the minimum variance and it was very well stated and documented. The applicants were not asking for anything more than what was absolutely necessary.

Motion made by Vice Chairperson to approve Section 23.6.5; Seconded by Secretary McCarthy:
Roll call vote:
Bono-Yes, Stults-No, Hoffman-No, Sagasser-Yes, Wagar-Yes, McCarthy-Yes, Alexander-Yes
5-Yes
2-No
Motion approved.

The following motion was made by Ms. Bono; Seconded by Vice Chairperson Wagar:
I move that the property owner's variance be approved for a setback of 12.46 feet on the rear of Parcel A1, a 22.46 foot variance on the front setback of Parcel A2 and a 26.04 foot variance on the lot width of Parcel A2.
Roll call vote:
Stults-Yes, Hoffman-Yes, Sagasser-Yes, Wagar-Yes, McCarthy-Yes, Alexander-Yes, Bono-Yes
Motion approved unanimously; ***Variance granted***.

2. Expiring Terms/Reappointment
   a. Bono
   b. McCarthy
   c. Stults

Ms. Bono and Mr. McCarthy agreed for reappointment to another term expiring December 31, 2016. Mr. Stults' reappointment depends on Planning Commission elections this fall.

3. Election of Officers

Mr. Sagasser nominated for Chairperson by Mr. Alexander; Support by Mr. McCarthy.
Vote unanimous.
Mr. Sagasser elected Chairperson.

Mr. Hoffman nominated for Vice Chairperson by Mr. Wagar; Support by Ms. Bono.
Vote unanimous.
Mr. Hoffman elected Vice Chairperson.

Mr. Alexander nominated for Secretary by Ms. Bono; Support by Mr. Wagar.
Vote unanimous.
Mr. Alexander elected Secretary.

Old Business:

1. Status of definition of Agriculture and allowance of building for retail trade

The definition of *Agriculture* was left as is and language for *18.1.3.1* was changed to read '*up to a maximum of four thousand (4000) square feet*'.

2. Status of Section 9.2.4 and Section 18.20 discrepancies between ten (10) acres and forty (40) acre requirement

Section 9.2.4 was amended to contain matching language as written in *Section 18.20.2*.

Mr. Alexander stated that the Zoning Board of Appeals did not recommend these changes to the Board of Commissioners as indicated in the April 26, 2013 letter to the Otsego County Board of Commissioners. The ZBA only referred them to the Planning Commission.

Communications: None

ZBA Member Items: None

Adjournment: 8:05 pm

Christine Boyak-Wohlfeil, Recording Secretary