

Otsego County Zoning Board of Appeals

Corrected Minutes for September 27, 2011/Regular Meeting

Call to Order: 6:00 pm by Chairperson Hoffman

Pledge of Allegiance

Roll Call:

Present: Chairperson Hoffman, Mr. Alexander, Mr. McCarthy, Ms. Bono, Mr. Stults, Mr. Sagasser

Absent: Vice Chairperson Wagar

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

Public Present: John W. Burau, Dalores Burau, Linda Myers, Dick Myers, Pene Murdoch, Linda Howard

Approval of Minutes from November 30, 2010:

Mr. Ferrigan stated the minutes had been revised adding the ‘*comments*’ to numbers twelve (12) through fifteen (15) under the General Finding of Facts on page four (4). The order of the Roll Call votes, pages five (5) and six (6), were also changed to reflect how they actually occurred.

Corrections to the minutes are as follows:

Mr. Stults requested the word ‘*Zoning*’ be added to *Exhibit 4* on page three (3).

Motion made to approve the revised minutes as corrected by Mr. Stults; Support by Ms. Bono.

Motion approved unanimously.

Citizen Comment Regarding Items not on the Agenda: None

Public Hearing: ZBA Case #11-001

John W. and Dalores Burau/Owners

Parcel#010-028-200-065-01/4372 Wild Rose Lane Gaylord, MI 49735

Owners request a variance to exceed the maximum amount of accessory buildings allowed, four thousand square feet (4000 sq ft), under Otsego County Zoning Ordinance Article 18.1 Accessory Buildings/18.1.3.1. Proposed addition will cause existing accessory buildings to exceed the maximum by one hundred fifty-two square feet (152 sq ft).

Public Hearing: Opened 6:05 pm

Mr. Ferrigan stated the case was investigated by Otsego County Inspector, Mr. West, on March 30, 2011 as the result of a ‘building without a permit’ complaint. Mr. Burau had previously received a variance for the pole building the addition is attached to. After speaking with Mr. Burau, Mr. West returned to the property to measure the existing buildings for the total square footage. Mr. Ferrigan concluded a variance was necessary because Mr. ~~Burau's~~ *Burau's* existing buildings had exceeded the maximum square footage.

Mr. ~~Burau~~ *Burau* addressed the Zoning Board explaining he constructed the addition to store a specific piece of equipment. He stated the Bagley Township Planning Commission had ~~approved~~ *recommended approval of* the variance and he did not believe his neighbors had any objections or complaints concerning the addition. He also stated the property is 4.03 acres, not 5.1 as stated on the ZBA application, because a hundred foot parcel to the north had been sold.

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Ms. Bono asked if it would be possible to keep the addition if one of the other accessory buildings was removed and Mr. Ferrigan replied it would. He also stated Mr. Burau could keep the addition if he were to attach one of the accessory buildings to the cottage.

Mr. Sagasser stated he had measured the buildings and his total dimensions differed.

Mr. Alexander requested the information be written on the white board so the Board had a better idea of the dimensional differences.

Mr. Ferrigan stated that using the formula, Mr. Burau was over the maximum by eighty-five point seven square feet (85.7 sq ft).

Public Hearing: Closed 6:25 pm

Old Business: None

New Business:

1. John W. and Dalores Burau/Owners
Parcel#010-028-200-065-01/4372 Wild Rose Lane Gaylord, MI 49735

Exhibit List for ZBA Case #11-001/John W. and Dalores Burau:

- Exhibit 1:* Property Card provided by Otsego County Equalization/4.15 acres
- Exhibit 2:* Otsego County Zoning Board of Appeals Application/Dated May 23, 2011
- Exhibit 3:* Otsego County Zoning Ordinance effective date March 20, 2010
- Exhibit 4:* Current Otsego County Zoning Map/RR Zoning district
- Exhibit 5:* Public Hearing Posting Notice
- Exhibit 6:* Letter dated July 7, 2011 to Bagley Township/Township reply dated August 10, 2011
- Exhibit 7:* List of parties notified w/Map showing the subject parcel
- Exhibit 8:* Receipt for Payment
- Exhibit 9:* Staff Recommendations including Photographs #1-4
 1. Aerial of Property
 2. Front of Addition
 3. Inside of Addition
 4. Rear of Addition
- Exhibit 10:* Otsego County Zoning Board of Appeals decision Case #80935-BY/ Dated October 27, 1998/Bagley Township minutes/Dated October 13, 1998/Application.
- Exhibit 11:* White Board Picture of Mathematical Changes in square footage of building sizes.
- Exhibit 12:* 2006 Otsego County Plat Book/Page 16/Bagley Township.
- Exhibit 13:* Legal Description of subject property signed by James L. Schwandt, Licensed Land Surveyor/Dated March 19, 1990.

General Finding of Facts/ZBA Case#11-001/John W. & Dalores Burau:

Mr. Hoffman read the following General Finding of Facts:

1. That John and Dalores Burau are the owners of certain real property located at 4372 Wild Rose Lane Gaylord, MI/Parcel ID #010-028-200-065-01/*Exhibit 1*
2. That this parcel is located in Bagley Township, Otsego County Michigan/*Exhibit 1/Exhibit 4*

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3. That the required fees for the variance request were paid by John & Dalores Burau/*Exhibit 8*
4. That the parcel referenced in ZBA Case #VZBA11-001 is zoned Recreation Residential/*Exhibit 4*
5. That John and Dalores Burau seek a dimensional variance from the requirements of Section 18.1 of the Otsego County Zoning Ordinance to construct a 16'x32' addition to an existing 40'x60' pole building/*Exhibit 2*
6. That Applicants request for a variance is an after-the-fact request since the 16'x32' addition has already been constructed/*Exhibit 9*
7. That the requirements of Article 24 of the Otsego County Zoning Ordinance were met/*Exhibit 6*
8. That the requirement that all parties within three hundred feet (300') of the subject parcel were properly notified of the variance request as certified by the Otsego County Zoning Administrator/*Exhibit 7*
9. That the Public Hearing notice was properly published as required by the Otsego County Zoning Ordinance/*Exhibit 5*
10. That the Zoning Board of Appeals in accordance with Section 23.2.1.3 of the Otsego County Zoning Ordinance has the authority to grant nonuse variances/*Exhibit 3*
11. That John and Dalores Burau applied and received a variance to construct the twenty-four hundred square foot (2400 sq ft) pole building the 16'x32' addition is attached to/*Exhibit 10*
12. That the parcel of land is now 4.15 acres as described by *Exhibit 13* and was agreed to by Applicant.

Motion made to approve the twelve (12) finding of facts by Mr. Alexander; Support by Mr. McCarthy.

Motion approved unanimously.

Motion made to accept Exhibits #1-13 by Mr. Stults; Support by Mr. Sagasser.

Motion approved unanimously.

Chairperson Hoffman stated under Article 23.6 of the Otsego County Zoning Ordinance, all of the following facts and conditions must be met:

23.6.1 Motion that the variance request will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district made by Mr. Sagasser; Support by Mr. Stults.

Mr. Stults stated there was no evidence presented to suggest the addition would be detrimental or injurious.

Mr. Sagasser stated that through his observations, the location of the addition and considering the size of the parcel, the addition would not be detrimental to public welfare.

Roll call vote:

Mr. Alexander-Yes, Mr. McCarthy-Yes, Ms. Bono-Yes, Mr. Stults-Yes, Mr. Sagasser-Yes, Mr. Hoffman-Yes
(6) Yes (0) No: Motion passes.

23.6.2 Motion that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district made by Ms. Bono; Support by Mr. Stults.

Mr. Stults commented there was no evidence to prove the variance was necessary.

Roll call vote:

Mr. McCarthy-No, Ms. Bono-No, Mr. Stults-No, Mr. Sagasser-No, Mr. Hoffman-No, Mr. Alexander-No
(0) Yes (6) No: Motion fails

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23.6.3 Motion that special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district made by Mr. McCarthy; Support by Mr. Alexander.

Mr. Sagasser commented that the size of the parcel was unique to the lake. And that far less than 25% of the lot was going to be covered.

Mr. Stults reminded the Board that although the parcel size was unique to the lake, it was not unique to the Recreational Residential (RR) district.

Roll call vote:

Ms. Bono-No, Mr. Stults-Yes, Mr. Sagasser-Yes, Mr. Hoffman-No, Mr. Alexander-Yes, Mr. McCarthy-Yes

(4) Yes (2) No: Motion passes

23.6.4 Motion that special conditions or circumstances are not the result of actions by the applicant or predecessor in title made by Mr. Stults; Support by Mr. Sagasser.

Mr. Sagasser added that the existence of such a large parcel on the lake was an advantage to the property and he did not believe it applied.

Mr. Stults stated it was the inaction of the predecessor in title and the applicant of maintaining such a large piece of property on the lake that resulted in this situation.

Roll call vote:

Mr. Stults-Yes, Mr. Sagasser-Yes, Mr. Hoffman-Yes, Mr. Alexander-No, Mr. McCarthy-No, Ms. Bono-No

(3) Yes (3) No: Motion fails

23.6.5 Motion that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land made by Mr. McCarthy; Support by Mr. Stults.

Mr. Stults commented that the applicant has been using the land without the need for the addition and is therefore beyond the minimal reasonable use of the land.

Roll call vote:

Mr. Sagasser-Yes, Mr. Hoffman-No, Mr. Alexander-No, Mr. McCarthy-Yes, Ms. Bono-No, Mr. Stults-No

(2) Yes (4) No: Motion fails

Chairperson Hoffman stated 23.6.2, 23.6.4 and 23.6.5 did not pass the criteria

Mr. Stults made the following motion; Support by Mr. Alexander:

Based on the requirement of the Otsego County Zoning Ordinance that no such variance or modification of the provisions of this ordinance shall be granted unless it appears that there is clear and convincing evidence the requirements of 23.6.1 through 23.6.5 are all met and our voting on those 23.6.2, 23.6.4 and 23.6.5 failed, Therefore the variance request is denied.

Roll call vote:

Mr. Hoffman-Yes, Mr. Alexander-Yes, Mr. McCarthy-Yes, Ms. Bono-Yes, Mr. Stults-Yes, Mr. Sagasser-Yes

(6) Yes (0) No: Motion passes

Chairman Hoffman stated that the variance request was denied.

Mr. Ferrigan told Mr. Burau he would receive an official notice explaining the appeal process.

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Audience members had neighbor complaints and were instructed to contact Mr. Ferrigan during business hours to formally file a complaint. He would proceed with the appropriate action to enforce the ordinance.

2. Election of Officers:

Mr. Hoffman nominated for Chairperson by Mr. Stults; Support by Ms. Bono.

Vote unanimous.

Mr. Hoffman elected Chairperson.

Mr. Sagasser nominated for Vice Chairperson by Mr. Alexander; Support by Ms. Bono.

Vote unanimous.

Mr. Sagasser elected Vice Chairperson.

Mr. McCarthy nominated for Secretary by Mr. Stults; Support by Mr. Alexander.

Vote unanimous.

Mr. McCarthy elected Secretary.

Communications: None

ZBA Member Items:

Mr. Stults requested the minutes be sent to Board members as soon as complete within the eight (8) days as stated in the Michigan Open Meeting Act.

Mr. Alexander requested the ~~motion~~ *discussion* to interpret Zoning Ordinance 18.1.3.1 to be postponed until the next Zoning Board of Appeals meeting. He also requested the five (5) voting criteria list be included with the information package sent to the townships.

Mr. Stults stated the alternate positions on the Zoning Board of Appeals still needed to be filled.

Adjournment: 9:06 pm

Christine Boyak-Wohlfeil, Recording Secretary