

**OTSEGO COUNTY  
ZONING BOARD OF APPEALS**

**AGENDA  
November 28, 2017  
6:00 PM**

**MEETING WILL BE IN THE PLANNING AND ZONING MEETING ROOM LOCATED AT 1322 HAYES RD**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**APPROVAL OF MINUTES: *From October 25, 2016 meeting***

**CITIZEN COMMENT REGARDING ITEMS NOT ON THE AGENDA**

**PUBLIC HEARINGS**

**NEW BUSINESS**

- 1. Elections**
- 2. Expiring Terms:**
  - a. Sagasser**
  - b. Hoffman**

**OLD BUSINESS**

**COMMUNICATIONS**

**ZBA MEMBER ITEMS**

**ADJOURNMENT**

# Otsego County Zoning Board of Appeals

Proposed Minutes for October 25, 2016

**Call to Order:** 6:00 pm by Vice-Chairperson Hoffman

**Roll Call:**

Present: Vice-Chairperson Hoffman, Secretary McCarthy, Ms. Bono, Mr. Colosimo, Mr. Brown, Mr. Glasser

Absent: Chairperson Sagasser-*Excused*

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

Public Present: Dave Delaney, Edgewood Holdings' attorney, Doug Miller, property owner, Carolyn Shoemaker, Theresa Hansen, Kevin Hansen, Frances Robb, George Murphy, Mike Roper, Randy Stults

**Approval of Minutes from May 31, 2016:**

Motion made to approve minutes as presented by Mr. Brown; Seconded by Mr. McCarthy.

Motion approved unanimously.

**Citizen Comment Regarding Items not on the Agenda:** None

**Public Hearing:**

*Interpretation of Unlisted Use:*

*A request for an interpretation on the allowance of commercial storage units as an unlisted use in the R1/Residential Zoning District*

*PZBA15-002Edgewood Holdings LLC*

*010-015-200-055-01 / 010-015-200-065-02*

*2125 Evergreen Dr Gaylord, MI*

*Section 21.44 Unlisted Property Use*

*Public hearing open: 6: 02pm*

Vice-Chairperson Hoffman stated the case, opened the public hearing and invited the applicant to speak.

Dave Delaney, Edgewood Holdings LLC representative, stated the proposed storage units would be for residential storage of other residents' belongings not commercial storage per se. He compared other listed commercial uses in the R1 Zoning District such as golf courses including miniature golf courses, colleges, utility structures, wireless communications towers and wind turbine generators (WTG). He referred to the allowance of restaurants and maintenance garages within a golf course as comparable to the proposed use. He continued, stating the Zoning Board of Appeals (ZBA) has the authority to allow a use that was not listed in a district if other uses were comparable per Section 21.44 Unlisted Property Uses. He cited Bagley Township's approval of the request allowing the use as a permitted use subject to special conditions and Crestwood Subdivision's restriction of any detached accessory building for its residents. Mr. Delaney identified a previous case for residential use regarding the same parcels years ago that was denied by the Planning Commission for incompatibility with adjacent uses of land. He believed denying this request would unreasonably prevent the owner from using the property and create an unnecessary burden. He concluded the ZBA find the use compatible and let the township and county planning commissions add the restrictions to the use stating it was unfair to let a less intense use be allowed when a golf course was already a permitted use subject to special conditions.

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Ms. Bono questioned the previous case cited stating it was a development that was denied.

Mr. Delaney stated it was a site condominium for residential use and it was denied for incompatibility.

Ms. Bono stated the plan submitted was denied not the use; a residential structure could still be constructed on the property as a permitted use.

Mr. Glasser stated he wanted to clarify that the statement on pages four (4) and five (5) of the application submitted, *'Not permitting storage units would unreasonably prevent the owner from using the subject site for a permitted use or would render conformity unnecessarily burdensome.'* was Mr. Delaney's opinion and according to Bagley Township's written response, it was a recommendation to consider the use not an approval. He also stated the motion made on the previous case years ago was denied for incompatibility with the size and character of adjoining property not the use.

Vice-Chairperson Hoffman asked for comments from the public present.

Carolyn Shoemaker, neighboring property owner, questioned if the property would be rezoned; she was not in favor of that. She was also concerned about accessing one of her parcels off Evergreen should she sell it stating a gate had been put up.

Vice-Chairperson Hoffman stated the property was not being rezoned at this time; the Planning Commission had the authority to rezone, the ZBA was here to interpret text.

Mr. Miller stated they had put up the gate but they would allow her access.

Theresa Hansen, neighboring property owner, stated she had grown up on Evergreen on the adjoining parcel and was against the use as a business; she felt it would set precedence. She stated this was a family neighborhood and the use would create more traffic; she was very concerned with the safety and feel of the neighborhood. She requested a decision be made and that the residents' concerns be taken into consideration.

Randy Stults stated he was concerned with the R1 Zoning District throughout the entire county as this would affect all townships. He also stated if the interpretation was of a comparable use, all the townships should have a recommended say per Article 27 Township Participation not just Bagley. He continued that since the definition of *'commercial'* was not in the Ordinance, the ZBA could determine the meaning but he contended that when the Ordinance was written adding Section 4.1.9 *Structure for storage of the owner's personal possessions and non-commercial activities*, commercial was meant as using the property for profit. Mr. Stults also stated there were reasons why some uses such as golf courses were allowed, as they typically covered a larger parcel of land with greater setbacks and were designed for surrounding residential use increasing the value of the properties. The Michigan Zoning Enabling Act also stated uses that were allowed in certain districts and had to be followed by local government.

George Murphy stated he was for anything that increased property values but did not feel this was an appropriate use of this site; he did not feel this would increase values at all and also thought *'commercial'* to mean making money. He was concerned with an increase of traffic and especially with safety at school bus stops.

Frances Robb, adjoining property owner, stated she felt it would be inconvenient for the people of Crestwood to access the units from Evergreen and was concerned they would cut through her property to get to the storage units.

Mr. Delaney disagreed with Mr. Stults stating the Michigan Zoning Enabling Act did require certain provisions in the ordinance but it was left to the discretion of the local unit. He brought up the subject of Wind Turbine Generators (WTG) as comparable and stated the ZBA only needed to

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consider the criteria and interpret as to whether the use is comparable to other uses listed in the district.

Vice-Chairperson Hoffman asked if there were any other questions or comments; hearing none, the public hearing was closed.

*Public hearing closed: 6:37pm*

## **New Business:**

### *Interpretation of Unlisted Use:*

*A request for an interpretation on the allowance of commercial storage units as an unlisted use in the R1/Residential Zoning District*

*PZBA15-002Edgewood Holdings LLC*

*010-015-200-055-01 / 010-015-200-065-02*

*2125 Evergreen Dr Gaylord, MI*

### *Section 21.44 Unlisted Property Use*

Vice-Chairperson Hoffman read Section 3.3 District Requirements and Article 4 R1/Residential Zoning District's Intent along with Section 4.1.9 and opened the discussion.

Ms. Bono stated she disagreed with the statement in the application that *'Not permitting storage units would unreasonably prevent the owner from using the subject site for a permitted use or would render conformity unnecessarily burdensome'* as there were other listed uses that could be performed.

Mr. Brown stated he did not see a comparable use in the district and with the negative public comments, they should move forward with a motion.

Vice-Chairperson Hoffman stated Land Use had received four (4) letters against the proposed use. He referred to Exhibit 11 Finding of Fact and asked for any additions or discussion.

Mr. Glasser stated he found the Finding of Fact to be true and moved to adopt them as so.

Vice-Chairperson Hoffman disagreed stating number one (1) of the Finding of Fact was untrue because the Zoning Ordinance specifically excluded commercial storage buildings in Section 4.1.9 *Structure for storage of the owner's personal possessions and non-commercial activities*. He stated it had been considered when the section was written and 'non-commercial activities' was intentionally added to exclude them so it was *not* an unlisted use in a R1 Zoning District.

Mr. Glasser stated commercial storage units were not listed as a use by right or by special use permit therefore it was unlisted.

Mr. Stults stated he thought the intent of unlisted uses was a use not listed in any zoning district; commercial storage was listed in other zoning districts but not in the R1 District.

Mr. Delaney stated in Section 21.44 the Ordinance states a use not listed with a comparable permitted use in *that* District; it is excluded in the R1 District under permitted use but not under permitted use subject to special conditions.

Vice-Chairperson Hoffman moved that there was no reason for an interpretation because commercial storage was specifically excluded from R1 in the Zoning Ordinance and the ZBA could not grant a use variance.

Mr. Glasser stated it was important to include the Finding of Fact for reference to the decision; they could strike number one (1) if it was preferred.

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Vice-Chairperson Hoffman agreed to strike number one (1) of the Finding of Fact

Motion made by Mr. Glasser to adopt *Exhibit #11* Finding of Fact striking number one; Seconded by Mr. McCarthy. (SEE ATTACHMENT)

Motion approved unanimously.

Motion made by Mr. Glasser based on the Finding of Fact, the ZBA affirms commercial storage buildings are *not* a comparable use to other listed uses in a R1/Residential Zoning District; Seconded by Mr. Brown.

Vice-Chairperson Hoffman requested a roll call vote for the motion on the floor:

*Roll call vote:*

Hoffman:     *yes*  
McCarthy:    *yes*  
Bono:         *yes*  
Colosimo:     *yes*  
Brown:        *yes*  
Glasser:      *yes*

*Yes- 6*

*No- 0*

Motion passes

**New Business:** None

**Old Business:** None

**Communications:** None

**Adjournment:** 7:04pm by Vice-Chairperson Hoffman

Mike McCarthy, ZBA Secretary

Christine Boyak-Wohlfeil, Recording Secretary

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*ATTACHMENT:*

## OTSEGO COUNTY ZONING BOARD OF APPEALS

PZBA15-002  
Interpretation of Unlisted Use  
Edgewood Holdings LLC  
010-015-200-055-01/010-015-200-065-02

### FINDING OF FACT:

1. ~~This is a request for an ordinance interpretation for an unlisted use. Exhibit #1, Exhibit #3, Exhibit #5~~
2. The interpretation is for a comparable use to a storage structure for commercial activities in a R1/Residential Zoning District. *Exhibit #2, Exhibit #3*
3. A R1 Zoning District permits storage structures for owners' personal possessions and non-commercial activities. *Exhibit #3*
4. The R1 properties are currently under the ownership of Edgewood Holdings LLC represented by David Delaney, attorney. *Exhibit #4*
5. The Public Hearing Notice was published in the Herald Times on October 7, 2016 *Exhibit #6*
6. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #7, Exhibit #8*
7. The required fees have been collected by Otsego County Land Use Services. *Exhibit #9*
8. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
9. The Zoning Board of Appeals has the authority to interpret the zoning text and classify a use not listed with a comparable permitted use in that same District after review and compliance with the Otsego County Zoning Ordinance. (Section 26.6) *Exhibit #3*
- 10.

**Exhibit #11**

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## FINDING OF FACT:

### ARTICLE 4 R1 RESIDENTIAL DISTRICT

#### INTENT

These districts are designed to provide for one (1) and two (2) family (duplex) dwelling sites and residential related uses. The uses permitted are intended to promote a compatible arrangement of land uses for homes, keeping housing areas free of unrelated traffic, nuisance land uses, and other negative influences on the residential environment.

#### SECTION 4.1 PRINCIPAL USES PERMITTED

No building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses:

- 4.1.1 One (1) family dwellings
- 4.1.2 Two (2) family dwellings (duplex) subject to the density standards for one (1) family dwellings and a minimum lot width of one hundred fifty (150) feet
- 4.1.3 Publicly owned and operated parks, parkways, and outdoor recreational facilities
- 4.1.4 Existing farms and agricultural uses
- 4.1.5 Family Care Facilities
- 4.1.6 Cemeteries when developed on sites of ten (10) acres or more Permit criteria include [[Article 21.4](#)]
- 4.1.7 The raising of nursery field stock, on sites of two (2) acres or more, but excluding storage buildings, greenhouses, offices or other structural facilities, and excluding any outdoor storage of materials; the intent being to limit the use of land to raising plant materials.
- 4.1.8 The following in-home uses provided no more than twenty-five percent (25%) of floor area may be used for such a purpose:
  - 4.1.8.1 Offices and home occupations when operated within the confines of a one (1) family dwelling as an accessory to living quarters [Permit criteria for these uses include [Article 21.12.](#)]
- 4.1.9 Structure for storage of the owner's personal possessions and non-commercial activities. These structures shall not be used as residences. Structures shall meet the size requirements of [Article 21.1.3.](#)
- 4.1.10 WTG Building-Mounted: Permitted as an accessory use to an allowed Principal Use

#### SECTION 4.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

The following uses may be permitted, subject to the conditions herein imposed for each use, the review standards of [Article 19](#) and only after the review and approval of the site plan by the Planning Commission. [See [Article 21](#) for applicable Specific Requirements for Certain Uses, if any, and/or [Article 23](#) for Site Plan Requirements.]

- 4.2.1 Churches, public libraries, public buildings (excluding public works garages and storage yards) and uses normally incidental thereto
- 4.2.2 Public, parochial, and other private elementary, middle and/or secondary schools; and all accessory school bus parking lots
- 4.2.3 Colleges, and other institutions of higher learning, public or private, offering courses in general, technical, or religious education, all are subject to the following conditions:
  - 4.2.3.1 Any use permitted herein shall be developed only on sites of at least five (5) acres in area.
  - 4.2.3.2 No building other than a structure for residential purpose shall be closer than fifty (50) feet to any property line.

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4.2.4 Private, Non-commercial recreational areas and recreational facilities

4.2.5 Golf courses, or miniature golf courses, providing that:

4.2.5.1 Accessory restaurant and bar uses shall be housed within the club house. Uses strictly related to operation of the golf course itself, such as maintenance garage, or pro shop, may be located in separate structures. No structure, except minor rain shelters, shall be located closer than seventy (70) feet from the lot - line of any adjacent residential land and from any public right-of-way.

4.2.5.2 All parking areas shall be surfaced or so treated as to prevent any dust nuisance;

4.2.5.3 Refer to [Article 21.11](#) for additional conditions pertaining to golf courses.

4.2.6 Group care facilities meeting applicable state licensing requirements

4.2.7 Utility and essential service structures when their operating requirements necessitate locating the facilities within the district in order to serve the immediate vicinity (storage yards excluded) [Permit criteria include [Article 21.10](#) regarding screening fence.]

4.2.8 Personal Wireless Services Telecommunications Towers and Facilities one hundred fifty (150) feet or less in height, self-supporting (lattice) or guyed [Permit criteria include [Article 21.46](#)]

4.2.9 WTG Small: Permitted as an accessory use to an allowed Principal Use

4.2.10 Unlisted property uses if authorized under [Article 21.44](#)

## **FINDING OF FACT UNDER ARTICLE 21/SECTION 21.44**

### **SECTION 21.44 UNLISTED PROPERTY USE**

The County Zoning Board of Appeals shall have power on written request of a property owner in any Zoning District to classify a use not listed with a comparable permitted use in the District giving due consideration to the provisions of [Article 19](#) of this Ordinance when declaring whether it is a use permitted by right or by special permit. If there is a comparable use, then the procedures established in this ordinance for approval of a permit for that use must next be initiated in order for the applicant to apply for the necessary permit(s). If there is no comparable use then the applicant shall be so informed and an amendment to the text of the ordinance or a rezoning would be necessary prior to establishing requested use on the property.

## **FINDING OF FACT UNDER ARTICLE 26/BOARD OF APPEALS**

### **SECTION 26.2 JURISDICTION**

26.2.1 The Zoning Board of Appeals shall have all the powers and duties granted by State law and this Ordinance, including the following specific powers:

26.2.1.1 Interpretation of the Zoning Ordinance Text and Map: To hear and decide requests for interpretation of the zoning map and zoning text, as well as for decisions on other special questions on which this Ordinance specifically authorizes the Zoning Board of Appeals to pass. [Sec. 3603 (1)]

26.2.1.2 Administrative Review: To hear and decide appeals where it is alleged by the appellant that there is an error in any administrative order, requirement, decision, or determination made by the Planning Commission or a Land Use Services officer charged with enforcement of this Ordinance. [Sec. 3603 (1)]

26.2.1.3 Variances: To grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of this Ordinance or to any other nonuse-related standard in the ordinance. [Sec. 3604 (8)]

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26.2.2 Exceptions: The Otsego County Zoning Ordinance does not provide for appeals to the Zoning Board of Appeals for special land use or planned unit development decisions.

26.2.2.1 The Zoning Board of Appeals shall have no jurisdiction over a decision of the Planning Commission in regard to matters concerning the granting of special use permits. [[Section 19.13](#) of the current Zoning Ordinance]

## SECTION 26.5 USE VARIANCE

Nothing herein contained shall be construed to give the Zoning Board of Appeals the power or authority to change the Zoning Ordinance or the Zoning Map so as to allow a use of land that is not permitted in the district in which the property is located.