

MINUTES  
GREEN LAKE TOWNSHIP ZONING BOARD OF APPEALS MEETING  
JANUARY 13, 2010  
9394 10<sup>TH</sup> STREET, INTERLOCHEN, MI

Call to order: 7:00 pm

Roll call: Volkening, Fitzgerald, Haight, Jon Shuster, Jackowski, present. McDonald excused replaced by Jon Shuster.

Election of officers:

The Chairman read the bylaws in regard to election of officers.

The Chair opened the nominations for Chairperson.

Motion made by Fitzgerald to leave things the way they are Jackowski as Chair, Volkening as Vice Chair and Fitzgerald as Secretary.

Fitzgerald decided that each office should be voted on individually.

Chairman Jackowski asked if there was anyone else that wanted to be nominated for office of Chair. There were none.

He asked if anyone wanted to be nominated as Vice Chair. There were none.

He asked if anyone wanted to be nominated as Secretary. There were none.

Chairman made a motion that the nominations be closed. Motion seconded by Volkening. Motion carried. 5 yes

The Chairman called the vote for Jackowski for Chair person, Volkening for Vice Chair and Fitzgerald for Secretary. Motion carried. 5 yes

Approval of the agenda:

Motion made by Fitzgerald and seconded by Schuster to approve the agenda as presented. Motion carried. 5 yes

Conflicts:

Chairman Jackowski said that Pat McDonald asked to be excused. He felt he had a conflict according to the definition of conflicts in the Bylaws, Section 6 subsection 2a. There were no other conflicts.

## Public Hearing:

PV09-06 J.P. Voss requests a variance to have a boat display area in the 60 foot front yard setback. The display area would be 25 feet from the road right of way. He is also requesting that not be required to follow the regulations in Article 8 I. of the Green Lake Township Zoning Ordinance that requires that all business uses in the commercial zoning district have a paved and curbed parking area and paved driveways, he is asking to use a gravel and grassed area instead. The property is located at 11850 US 31 South, Interlochen, MI. Parcel # 28-07-007-014-41

The Chair read the sections of the Zoning Ordinance that pertain to this request. He said that Mr. Voss would be given the opportunity to state his case. And that Krysti Baker the Township zoning administrator and Ward Kuhn the Township attorney would give remarks on anything in your presentation on behalf of the Township. He said there would also be an opportunity for anyone in the public to make remarks.

The Chair said that the ZBA was allowed to consider these requests from two perspectives. One dimensional considerations, and two, interpretations.

The Chair said first let's look at the display area in the road right of way. In this matter we are looking at a dimensional or non-use variance. He read from the Ordinance that we are looking for a practical difficulty due to the property not the individuals. He said in other words, this Board cannot consider financial costs in its decision making process. The Chair read Section 15.4 a-d from the Ordinance. He said the Ordinance requires that all circumstances in a through d must be met in order for the Board to grant a variance.

- a. That special conditions and circumstances exist which are peculiar to the land, structure, building or use involved;
- b. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same Zoning District under the terms of this Ordinance;
- c. That special conditions and circumstances do not result from the actions of the applicant.;
- d. That granting the variance will not alter the essential character of the area.

The Chair then referenced Article 9 Section C.1.

## Boat and Recreational Vehicle Sales

Outdoor storage and display shall not be located within any required setback or buffer area unless storage products are fully screened by a fence. The Chair noted that shall is defined as being mandatory not discretionary.

The Chair said that the request to use a gravel and grassed area instead of a paved and curbed parking area and paved driveways is obviously not a dimensional variance so the only other matter in which the ZBA can consider this must be interpretation. He said page 84 of the Ordinance I. 1 reads parking areas and driveways shall be paved with asphalt and or concrete and include concrete curbing. Again shall means mandatory not discretionary.

The Chair said we also have a letter from MDOT requirements taking precedence over any decision that this Board may arrive at.

The Chair said that he is not forming any decision for this Board he is simply stating what we have in our Ordinance.

The Chair then turned the floor over the appellant.

Jim Johnson spoke on behalf of the appellant. He said that Mr. Schuster and Mr. Jackowski were also present at the Planning Commission meeting so they have some background information. He said he would like to share with the rest of the Board what has been going on. He said that L. A. Marine is a seasonal low volume dry land marina. They do basic boat repair, many of those repairs are actually done on site, not even done at this location. He said on a very limited basis they will sell some used boats that they may have purchased out right or handled on a commission basis. They do not sell new boats, they do not have an indoor display area, they do not have a showroom, they do not have a store, it's primarily a repair type of business. They do shrink wrap boats in the fall and do the winterization on motors and so forth, and as part of that service historically they have offered free storage to those people that used their winterization service. That is why you see a bunch of boats there. They are not in the rental storage business. These guys have been in business for over 27 years. They are not a fly by night operation. They just didn't come in and land here. They were very happy in Almira Township, but because of a domestic dispute it was not possible for them to stay there. They moved into Green Lake Township on the property that we are talking about today back in 2003. Peter Gropp actually purchased the property and entered into a lease purchase arrangement with John and Robin Voss. They moved onto the property on approximately November 20, 2003. They moved some boats onto to property at that time that they had already committed to storing for the winter. At that time year as you are aware it is kind of a rush because of the weather. They did not conduct business per say until that following Spring or at least attempted to conduct business. After they moved onto the property Krysti and Mr. Biondo stopped by and told them they needed a permit to do business. The Voss's thought this would be a relatively simple process so they waited until Spring before they were ready to open to comply with the requirements of the Township. They went into this property thinking that they could go in and open shop. The history of this property going back to the late 1800's as far as they could tell had always been a commercial use of some sort. The immediate previous owner, Rob Lucal, ran an antique shop out of the pole building and also sold antique boats. Prior to Mr. Lucal being there was a Mr. Scott that sold dune buggies at this location. He also had a

farm market or something. That goes over a 30 year span. His understanding is that when the property was first used there was a store at this location and the road actually went through, I think, where Mrs. Van Dyke's house is now.

Mrs. Van Dyke commented that they did not have all their facts straight.

Mr. Johnson said this was true he may not have his facts straight. He is just doing the best he can here. He said if you want to correct me later have at it.

Mr. Johnson said another thing that led them to believe that they should not have a problem is that if you go two or three hundred yards back to the east you have Scott's Interlochen Boat Shop which is a higher volume and more sophisticated type of operation than what they were proposing. The boats at Interlochen Boat Shop have been displayed there for as long as he can remember. He said what he is saying that they didn't come in here and try slide in and open a business under the cover of darkness that was implied at the last meeting that he was at. This was something that I think any reasonable person could assume that they could go into a commercially zoned piece of property and operate a business similar to one that was 300 yards away. He said they found that that was a bad assumption. He would add that John Voss is a licensed Michigan Real Estate Broker, not a salesman, a broker. He has dealt with a lot of commercial property over the years. He did in fact do his due diligence on this. In as much as Mr. Lucal had boats displayed on the property at one time. In regard to the display area, I digress; they went through the process of obtaining a special use permit on the property. It was a long arduous process for them and I am sure for Ms. Baker as well. At one point they were issued a special use permit. At the time that that special use permit was issued, a stipulation was put in that no more than four boats would be allowed in the display area. The same display area that we are talking about right now. He said the four boat thing was brought up by Mr. Sager who he thinks was Chairman of the Planning Commission at the time. There was never discussion on it. Subsequently that special use permit was revoked, because they had six boats in the display area. There was also a matter of three boats in a buffer zone behind a fence that I guess adjoined a residential property. That buffer zone in reality should never had been there in the first place. Since the last planning commission meeting the buffer is no longer required. He said that they had satisfied the Commission that it was not a problem for the adjoining neighbor Mrs. Saffron. She testified at the meeting that she had no problem with boats being placed in that 50 foot zone. He said they reapplied for the special use permit two months ago. He said the special use permit was re-issued but contingent upon us receiving this variance that we are asking for tonight. We can look at the display are two different ways. He said he is not an expert on Ordinances. He said he saw in the Ordinance in Article 16 .5 pre-existing special uses the special use that was issued before was issued under the 1995 Ordinance allowed for that display area within this 60 foot setback. They way he reads it this display area should be treated as a pre-existing special use. He read from that Section, page 164. Barring that not being a legitimate argument, you can look along the US 31 corridor and see numerous businesses that have various items stored in that 60 foot area. He said they provided pictures tonight that show Interlochen Boat Shop and there are boats and other things in that area. He

said he looked in two legal dictionaries and setback is not defined as pertaining to anything but permanent structures. He said Mr. Hedberg wrote a support letter for this request. He provided a short definition of setback.

Chairman Jackowski said that in Article 3 of the zoning ordinance there is a definition. He read it stating that it says a line parallel to a property line which is a specified distance towards the center of the parcel. Side, front, rear, and water front setbacks.

Mr. Johnson said he agrees with that when it is structures not moveable items. He said the purpose of a setback is not to allow someone the peaceful enjoyment of their property. It is there to make sure they do not encroach on the person next door. It deals with permanent structures not with moveable objects.

The Chair asked the zoning administrator for comment.

Krysti Baker said that in regard to his last statement where he said he looked in legal dictionaries and setbacks were only for permanent structures. She said she supplied all the Board members with pages of the ordinance in regard to this request. On page 103 of the ordinance it says outdoor storage shall not be located in any required setback. This section of the ordinance is specific to boat and recreational vehicle sales. Our ordinance has clearly defined that things cannot be in the setback whether they are permanent structure or in the case of this section of the ordinance boats. She said as far as considering the display a pre-existing special use, the ordinance explains pre-existing special uses as a use that happened before the ordinance zoned for it and were legal before the ordinance was adopted. Pre-existing special uses do not apply to special use permits that have been revoked. They apply to special uses that were in compliance prior to a new ordinance.

Mr. Johnson said he did not see in this section where revoked special use permits were not a part of this section.

Krysti Baker said that you have been in front of this Board and asked them to interpret a revoked special use permit. That has already been defined by this Board that a revoked special use permit is null and void and does not exist anymore.

Mr. Voss said that they did come before this Board before but it was not for that. We were looking for a definition of something else.

Krysti Baker said yes it was in regard to your revoked permit.

Mr. Voss said no it was not. At the time there was nothing in the ordinance in regard to this and apparently since then you have written something.

Krysti Baker said you were asking if a revoked special use permit could be re-instated.

Mr. Voss asked Mike Kronk if that was true.

The zoning administrator said she would get the file to confirm what their last request was.

The appellant requested an appeal to the Zoning Administrator's interpretation of section 9.8 of the ordinance.

The Zoning Administrator said that a revoked special use permit could not be re-instated. You appealed that interpretation.

Mr. Voss said that at the time there was no language in regard to their request so the zoning board of appeals said they would write some language.

Krysti Baker said at that meeting the Board of Appeals affirmed the decision of the Zoning Administrator. Their final decision was that revocation of special use permit is final and there is no reinstatement available.

Board member Volkening said they did not decide to create new language. The appellant was told to go back to the Planning Commission.

Board member Fitzgerald said they may have made a decision but asked Pat McDonald who was sitting on both the ZBA and the Planning Commission to go back to Planning Commission and spell it out better in the ordinance.

The zoning administrator read the motion made at that meeting. "Motion made by West and seconded by Volkening to affirm Krysti's decision because the ordinance as interpreted by the zoning board of appeals intends revocation to be final and does not provide for provisions for reinstatement. Motion carried 4 yes.

Mr. Voss said they were under the assumption that it was going back to the Planning Commission.

Ward Kuhn, the Township attorney said, so what that means is that any rights arising under the old special use permit were all terminated, including this display right.

Board member Volkening said that the appellant was asking for display rights tonight.

Mr. Johnson said they were asking for same thing that everyone up and down the corridor has.

Mr. Voss said the property owner Mr. Gropp contends that it was there before revocation, the lease was in place, and that it should be reinstated.

The zoning administrator said as far as Rob and Tammy Lucal, the previous owners of this property, they did get a special use permit to sell antiques. She said she provided that application in the Board's packets and it was not a boat sales business ever. He may have

had one antique canoe hanging from the ceiling in the barn for sale. She said he did sell a lot of antique fishing flies. He never received a special use permit to sell boats. She said she was down there on many occasions and there were never any boats on display for sale.

Mr. Voss said he had been looking all week for an article that was done that showed five boats in the display area that Mr. Lucal had left on the property when we purchased it. He said it was in the Record Eagle but he could not locate it.

Chairman Jackowski asked if this was an isolated incidence. He said for instance if he sold one boat but his business was to sell antiques.

Mr. Voss said he knows for fact that he sold boats. He said he sold Mr. Lucal a boat and he took it to this location and sold it.

Chairman Jackowski said that he has no evidence.

Mr. Voss said that he agrees they were probably sold under the antique business, because they were wood boats. But there were boats there on display.

The zoning administrator said she had never seen a boat on display when Mr. Lucal owned the property.

The zoning administrator said that speaking of advertisements in the newspaper she had seen an add for L.A. Marine over the past year advertising that you do sell new boats.

Mr. Voss said that was an old add from the old place and the Record Eagle just puts it in every year. He said he does sell new boats just not at this location. He said he sells 50 footers and 100 footers that he brokers but not from this property.

The zoning administrator said that Mr. Johnson had said that you do not sell new boats.

Mr. Johnson said he does not have a franchise to sell new boats. He said he can broker boats. If any of us came to him he has enough contacts to find a new boat for sale.

Ward Kuhn said he would like to point out to the Board members section 15.4 A. 2 of the zoning ordinance. It says that no non-conforming use of neighboring land, structures, or buildings in the same zoning district, and no permitted use of lands, structures or buildings in other zoning districts shall be used as the basis of the issuance of a variance. He said he thinks that this may be appropriate in regard to the claims that there are other businesses up and down the US 31 corridor with display areas in the front yard setback. He said the allegation is that there are other property owners who do have display areas in the front yard setback. Those businesses do have special use permits that were granted under the old ordinance that permitted these display areas.

Chairman Jackowski said that is right and that is the difference between revoked and pre-existing special uses.

Mr. Kuhn said that is right those are pre-existing special uses. That is what a pre-existing special use is and the display areas are protected by that provision. So the fact that there are other legal uses that are no longer possible under the new ordinance is not a basis for granting a variance. Just because the old ordinance permitted it does not justify a variance. We are called out in this section of the ordinance to not make that argument.

Mr. Johnson asked about 15.4 A 1 b. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance.

Chairman Jackowski said remember the heading above this section is that all of these four requirements must be met. Not just perhaps three or two.

Board member Fitzgerald said another thing about that is it states under the provisions of this ordinance. It does not say under the old ordinance. You are comparing businesses that have special use permits under the old ordinance. The old ordinance did not require paving or special curb cuts. These things were allowed under the old ordinance. You cannot say because these people have it you should have the same as they have. They are what is called grandfathered in under the old ordinance.

Chairman Jackowski pointed out that we are living in progressive times and changes are coming to Interlochen. There are not thousands of cabins around the lakes anymore we are seeing quarter of a million to half a million dollar homes. We see a corridor being developed. These things come as a part of natural growth. The ordinance is attempting to build this into it. We are sorry for the folks that have financial difficulties, we all are. These are difficult times. As I read to you by law we cannot consider financial hardship as reason for a variance.

Chairman Jackowski brought up Section 15.5 precedent. He said we have a problem with cases coming up in the future. That is not the intent of our new ordinance. We have to back the new ordinance.

Chairman Jackowski opened the meeting up to public comment.

Marilyn Van Dyke said she lives right next door to this property, 11940 US 31 South. She said she did not have any problems with J.P. she does not want to get in a fight with him but he did come in a fly by night, on Thanksgiving weekend. If he and just followed the rules he would not have had his special use permit revoked. She said you will be opening up a whole can of worms if you do not make him follow the new rules. She said there was never a driveway on her property and the Lucals lived next door while she lived next door. They sold antiques and never had a boat on the property. She said the property owner before the Lucals never had anything for sale on this property. They Scott's owned two properties and did do some business on the property just east of the

one in question. If you have laws and regulations everyone should have to follow them, or we might as well get rid of all of them and let every one do what they want.

Mike Kronk said he is just here today to support J.P. he is not his legal representative. He has two concerns. He said when you specified the grounds for a variance you limited to dimensional and interpretation. He said he believes the law is far more expansive than those restrictions. He said you can evaluate a use and evaluate other things as part of the appeal process. He does not believe the law restricts you to just those two. You have had other appeals. He said you can evaluate a use that is otherwise not mentioned in the ordinance, but that you find to be compatible with other uses. You have the opportunities to make findings for determinations that grant variances, which is a license to violate the law. If you did not have that opportunity you would have no purpose as a zoning board of appeals. He said an example was a union in Detroit that wanted to put up a sign larger than permitted. He said they could not meet setbacks and wanted a larger sign because a neighboring property had a large tree that would prevent viewing the sign. He said they took it up with the court of appeals and they said that it was a practical difficulty. He said financial difficulties can enter in but they are not the determinative because we can always argue that a rezoning might increase the value of the property or in todays world might decrease it but the long and short of it is it can be a factor, but not the sole determinative factor. He said as far as the reasons why do you have a requirement of paving and parking and no display. One reason would be because of large volume operations that would require this. Is this a large volume operation? That is the question that you as a zoning board of appeals have to determine. As far as the display area you could make a determination that there should or not be a variance. They are not asking to put a building there. They are asking to be 35 feet back not 60. That is common in residential variances. Be careful how you determine things. If you say you can't have boat for sale in a set back you may encounter a lot of problems within the community. If I have my boat for sale at my house and it is in the setback am I in violation. When you are talking about the driveway, this is important, this use has been approved by the Planning Commission. They are not asking for something that has not already been approved. They are just asking that within the context of the ordinance, you have let us do all this but instead of paving for five parking spaces, we want to use gravel. Be very careful when it comes to the driveway. Mr. Kronk said he believes the planning commission has the standards for driveways within the State of MI and national standards as well. If you require a paved driveway given what they did not have control over when the road was improved and that paving goes in it will increase the angle to extent that there has been damage to vehicles and trailers. If that continues to happen who is responsible. He said they can live with the gravel because it is a little giving. Gravel is more forgiving than asphalt or cement. Who will be responsible will be the one that made the mandate for the paving.

Board member Volkening asked who was responsible for the damage now?

Mr. Kronk said in a sense the State of MI but there has not been anything serious enough to bring it up to the State of MI. If you have to do concrete J.P. knows this will happen and we will hold the State and Green Lake Township accountable. He said you have to

consider the reason for requiring paving. Wendy's depending on the time of day does have a lot of traffic. He said this use does not have any cars coming for the most part from late October until May. He said when he has stopped by there he has probably only seen 2 vehicles there that would be there for commercial purposes. He said you do have the ability and the authority to do this. If you can find that there is a practical difficulty, if you can find that in view of the entire ordinance the need for that does not apply to this particular property.

The chairman read Article 15 B. it says that the zoning board of appeals shall not grant a use variance or take any action that will effectively grant a use variance.

Board member Fitzgerald said we do not have the power to grant any use variance. He said an incorporated Township or city can give use variances.

The zoning administrator said that the zoning board of appeals does have the authority to deem a use similar to a use on the use table if the use is not listed as a use at all in the ordinance.

Ward Kuhn said he would like to draw their attention to page 83. Mr. Kuhn said there has been some insinuation that this board has to determine how many cars are coming and going from this location . If it is not a great number of cars then it is excused from having paved driveways and parking spots. Clearly the folks that passed this ordinance had small businesses in mind because page 83 states that this section is written for both small and large businesses. The ordinance says that the commercial district is located in distinct areas along US 31 in locations identified by the Green lake Township Master Plan. These locations are intended to provide locations for small businesses to meet the day to day convenience shopping and service needs of residents and to provide for automobile-oriented commercial sites that will generate large volumes of traffic and require large tracts of commercial land. The ordinance contemplates that the commercial district will have a large range of businesses from the mom and pop to the more substantial Tom's development on the corner. There is nothing in this section that would allow you to consider that there is not enough traffic to justify paving.

Mr. Johnson said that MDOT is not going to require that these guys pave the driveway.

The zoning administrator provided a letter from MDOT in the Board packets. It states that they are requiring the commercial curb cut to be completed if they want to use the property commercially. She gave a copy of the letter to Mr. Johnson.

J.P. Voss said he had never received a copy of this letter.

Ward Kuhn said that when we met with the Planning Commission over this matter an argument was made similar to tonight that it can't be paved it is going to be too sharp of an angle and they said they were on verge of getting excused from MDOT. Subsequent to that meeting MDOT did a site inspection and sent this letter that says sorry there is no reason you cannot pave it and you must pave it or discontinue the use.

J.P. Voss said they went over the top of these guys and said do not worry about this. He said he did not receive this letter he has never seen it. He said all he knows is that Krysti called them up and they inspected it and he never received a letter from them.

Ward Kuhn said the owner of the property received the letter.

The Chairman said it was addressed to Mr. Peter Gropp.

The Chairman said the letter states that if you wish to continue to use the property for a commercial use you must complete the commercial curb cut as required by the approved permit. The Chairman asked Krysti what the approved permit was referring to.

The zoning administrator said it referred to the approved permit from MDOT. They had to apply for a permit for a commercial curb cut. The permit requires that they pave the apron.

Board member Fitzgerald said it probably just outlined the engineering standards that had to be followed for the curb cut.

J.P. Voss said they have since gone over the head of MDOT and they have never received any of this. It has gone up the ladder.

Ward Kuhn said the person that signed this letter is up the ladder.

J.P. Voss said we are not dealing with the driveway tonight. We are just dealing with the asphalt and parking.

Ward Kuhn said you guys brought up the fact that if this had to be paved it would be too steep and that the Township would have some liability which I do not agree with at all. If it is not an issue it is not an issue but you guys brought it up.

Board member Volkening asked if they had done any of the MDOT work

Mr. Johnson said yes they had spent \$12,000 so far.

Board member Volkening said you have this split into two. The way he reads this you are asking not to pave the driveway or parking area. He says you do not want to pave where the site plan shows the drive meeting the MDOT curb. He said you are not asking that you do not have to pave the MDOT part.

J.P. Voss said no MDOT has nothing to do with it except that it would be contiguous with the asphalt that they are asking for in the parking area.

Board member Volkening said that from the site plan it looks like MDOT is asking that about 30 feet to the utility easement be paved. He said when I look at your application I

am looking as asphalt and pavement all the way out to the road. He said the MDOT requirement is whole different thing. He said MDOT requirements have nothing to do with us.

J. P. Voss said that what Krysti is talking about, and she is the only one that wanted the asphalt in the parking area all the way down to the MDOT line.

Board member Volkening asked if they had the MDOT engineering.

J. P. Voss said he did not have it with him.

Board member Volkening said the MDOT issue is separate from what they are asking of tonight.

Mr. Voss said that the MDOT letter describes what changes would have to be made if they just want to use the property residentially. He said that is the way it has been for many years now. Mr. Voss said that the driveway changes were only required by the Township and they have nothing to do with it sorry to say.

The zoning administrator said the Township only requires that you meet all the requirements of outside agencies. MDOT is one of the outside agencies. We are looking to see that we get something from MDOT that says they complied. Approval from all other outside agencies is a requirement of our ordinance to get a special use permit.

J. P. Voss asked why he never received a copy of the letter from MDOT.

Ward Kuhn said the owner of the property did receive it.

The Chairman said the owner just did not give you a copy.

J.P. Voss said the owner never received this letter he talked to him the other day.

He said they have further documentation from MDOT and the US Department of Transportation. He said MDOT does not have anything to do with it and it is not going to be paved I can guarantee you that.

Board member Fitzgerald said then MDOT would have to send Krysti a letter saying they are not requiring you to bring that driveway up to their specs.

Board member Volkening said he needed to be brought up to speed on what happened at the planning commission. He said Mr. Johnson made a comment that you have a special use permit.

J. P. Voss said yes we have one.

Board member Volkening asked if the permit was contingent upon the paving and boat display area.

J.P. Voss said it is not contingent on it, it is just whether you give it to us or not. We still have the special use permit and we still will be open.

Mr. Johnson said if you do not let them display boats in the setback they can still display boats in the display area.

Mr. Voss said it will just cause more aggravation.

Board member Schuster said that he recalls the special use permit was only to be issued if they met the requirements. MDOT approval, and all conditions met then they would be issued a special use permit. He said we are in a holding pattern until we get information back.

The zoning administrator said that the planning commission directed her not to issue the special use permit until the parking area was paved and curbed and the drive was paved and MDOT approval was received.

Board member Schuster said that is what the planning commission said.

Mr. Voss is here tonight to ask not to have to meet some of the conditions.

Mr. Voss said that these regulations that they are being asked to comply with have only been in affect since 2006. He said there are properties that have been sold since these rules were adopted and the new owners were not required to meet these regulations.

Board member Schuster said that may be but I cannot make a decision over stuff that I have no information on. It is all just here say to me.

Chairman Jackowski said this is all just conjecture and we are just going around in circles. He said we need to close this public hearing.

He said they did have a list of businesses that were not required to asphalt but he did not have that with him.

Board member Schuster said that may be but without looking into each circumstance which he cannot do tonight, he will be basing his decision tonight on the merits that have been presented to him and not in regard to any other business. He says he does not have the luxury of doing that. He has to see what is being presented tonight. He said you may have something that has some merit but he cannot just take Mr. Voss's word for it.

The Chairman said that if you feel some legal action needs to be taken against other businesses take it up with the zoning administrator. This is not what we are discussing tonight.

Board member Fitzgerald said that these regulations would only come into play if there was a change in use.

Mr. Voss said they did not have a change in use either. He said the Mr. Gropp's opinion is that they bought the property they had a special use permit, the lease is the same the use is the same and the property is the same as when he bought it.

Board member Schuster asked Mr. Voss if the Lucals were the previous owners.

Mr. Voss responded yes.

Board member Schuster said he was holding the application for special use at that time. He said the Lucals were only asking for antique store. That was their only request. He said they had a totally different use than what you are presenting tonight.

Mr. Voss said that he realized that.

Mr. Voss said again that under the antique business they did sell boats.

Chairman Jackowski told Mr. Voss you have made your point you are wasting everyone's time.

Mr. Johnson said he had one more thing. He said under the parking and loading section of the ordinance in Article 5.1 b he read required parking space and parking isle shall have a prepared dust free surface consisting of gravel, concrete, asphalt or similar material and shall be so graded to dispose of all water accumulated within the area without affecting neighboring property, public streets or highways. He said this does not preclude gravel as an acceptable material. He said again in Article 13 which deals with site plan review there is a statement under K which addresses the percentage of impervious surface has been limited on the site to the extent practical. He said impervious surface would include concrete does it not. Even asphalt. This is saying that it should be limited to the extent possible, in other words don't come in and pave the whole place. He said your zoning allows for that as a possibility, that you can have a gravel drive and parking area.

Board member Schuster said that falls under the Soil and Erosion County Department as far as that goes. They ensure that the water is diverted properly. He said that is not what they decide. They would issue a permit to you. He said that is beyond our control.

Mr. Kronk asked to make one last comment. The planning commission approved with a requirement of paving that is what is being appealed to you. He said I do not know where the paving came from other than that one section.

Ward Kuhn said it is paragraph 8.1 I is where it describes the intent and general standards and the very last sentence on page 84, says parking areas and driveways shall be paved with asphalt or concrete and include concrete curbing. So that is where this comes from.

Mr. Kronk said the ordinance also allows for gravel in some types of parking areas and that is what they are requesting. He said if the display area request is not approved they will just move it back to the 60 feet.

Marilyn Van Dyke asked how they could do curbs with gravel.

Chairman Jackowski said well you do not do curbs with gravel you can get curbs that are made out of concrete.

Mrs. Van Dyke said she would like to know how that would look because she is going to have to look at it.

The zoning administrator showed her a picture that was provided by the appellant.

Mr. Voss said that Krysti also wanted more trees, You will see the picture that they have added two more trees. The curbs are there for the parking spaces. They also wanted a fence for the dumpster. You can see in the picture that is already there. Everything they asked is to do since the planning commission meeting has been done.

The Chairman said well that is fine but we are only dealing with these two specific requests.

Mr. Voss said the only one that has pushed this issue has been Krysti.

Board member Fitzgerald said that is her job.

Chairman Jackowski said that is what she is hired to do.

Mr. Voss said before they even revoked the special use permit she was threatening us, because we had not completed the driveway.

Board member Schuster asked Mr. Voss to clarify threaten for the record please.

Mr. Voss said it was in conversations with me and Peter Gropp.

Chairman Jackowski said what does that mean, threat.

Mr. Voss said she told him he had to get another special use permit to move the display area. He said I took it as a threat. She said if you don't come in and do this and this and this who knows what the consequences are going to be. Well the consequences were that they revoked out special use permit and put me out of business, and I might add illegally.

He said as this all unfolds we will find out that they did not have any right to do what they did.

Chairman Jackowski said I do not know what the outcome of this will be.

Ward Kuhn said the outcome of the case is that it went to circuit court in Grand Traverse County where the judge upheld everything that the Township had done with regard to the revocation of the special use permit. Then it was appealed to the Court of Appeals and the Court of Appeals said nothing done wrong. It is a settled issue.

Mr. Voss said that is not true.

Board member Schuster asked if there were any fines imposed.

Mr. Kuhn said there were not any fines it was just determined that this was a lawful revocation.

Mr. Voss said it did not go to the Court of Appeals, the Court of Appeals did not take the case.

Mr. Jackowski said he was going to close the public hearing. He said we are repeating ourselves and putting ourselves to sleep here. He said the public hearing is closed and from this point on unless you are requested by one of the members of the Board to answer another question it is closed to the public.

Public Hearing Closed 8:25 pm.

Action on Public Hearing:

PV09-06 J. P. Voss requests a variance to have a boat display area in the 60 foot front yard setback. The display area would be 25 feet from the road right of way. He is also asking that he not be required to follow the regulations in Article 8 I. of the Green Lake Township Ordinance that requires that all businesses uses in the commercial zoning district have paved and curbed parking areas and paved driveways, he is asking to use a gravel and grassed area instead. The property is located at 11850 US 31 South, Interlochen, MI Parcel # 28-07-007-014-41

The Chairman said we can decide on these issues together or separately.

Board member Schuster said that he thought we should look at them separately.

The Chairman said dealing with the first one would be having a boat display in the 60 foot setback.

Board member Fitzgerald said one thing that Mr. Voss being a real estate salesman, broker or whatever should know that you check the Township rules and zoning when you

buy a property before you buy it. He said Mr. Voss mentioned that other places changed ownership and that is not a valid excuse.

Chairman Jackowski agreed.

The Chairman said most times the work of the zoning board of appeals is done because of small lots of record. He said he does not see a dimensional problem here. He said the issue of the 60 foot setback, said other than promoting goods, he still feels the proof of what the community wants is reflected in the ordinance. They have been working on it for the past several years. They would like to see this natural progression into something that is a little more sophisticated, something that more reflects the area that we have. The log cabin days as he mentioned earlier are not realistic with the development that we see today, along with heavy traffic along the roads. Safety as we read in our ordinance is something of prime consideration as well, as is the welfare of the community. Safety is another thing. We have enough distractions and have had some serious accidents in the Interlochen area. We have to take safety under consideration when displaying things. He said he knows everyone has to sell their goods and they have to have advertising methods. We have to consider how much encroachment is safe. And how we have to allow anyone else coming in to this area. Do we have to follow the rule of precedent and allow the same things until another generation comes along.

Board member Fitzgerald said he was on the planning committee when the other ordinance was done and we had the Grand Traverse County Guidebook. The Guidebook addressed the highway and they had slides and documentation and outside planners came in and make suggestions on how make our highway businesses more attractive and how to make the whole area more attractive as you come into the Township. They didn't want it like at Chum's Corners. This is why a lot of these regulations are in the ordinance.

Board member Volkening asked Krysti if there was a 60 foot setback all the way down the highway.

Her response was that all commercially zoned properties have a 60 foot front yard setback.

Board member Volkening asked if MDOT had a 60 foot setback.

The zoning administrator said no they do not have anything to do with our setback. MDOT has curb cut design for commercial properties. She said only the commercial properties on US 31 have 60 foot setback. Not all the properties on US 31 are zoned commercial.

Board member Fitzgerald pointed out the MDOT right of way varies along US 31.

The zoning administrator said the setback is measured from the front property line.

Mr. Voss said the road right of way there is 33 feet.

Board member Fitzgerald said there is so much involved here it is at the end of the Township and it is a small business, and like he says he does not have much traffic, but then again the work that was done on the ordinance and everything is important to us.

Ward Kuhn asked if he could direct the Board to page 157 part of what you read originally. It is the four things that you have to determine with regard to granting a variance. He suggested that whoever makes the motion should reference these and say why they have or have not been satisfied. He said that you are going to support the request you have to explain how you figure all four of those are met. If you are opposing the variance then you have to point out where the request does not satisfy the four requirements. I'll assist to the extent that I can. But I think that you need to focus on this as you make your decision.

Board member Fitzgerald said he does not see anything in there that really justifies it.

The Chairman said there could be an argument over b, but I do not know.

Board member Fitzgerald said that b says the terms of this ordinance, not the old ordinance.

The Chair read b.that literal interpretation of this ordinance would deprive the applicant.

Board member Fitzgerald said we have to deal with the terms of this ordinance.

The Chair said a through d must be satisfied.

The Chair read 15.4 1.

- a. That special conditions and circumstances exist which are peculiar to the land, structure the building or use involved....

Board member Fitzgerald said this may be the only one that pertains because it is such a small use.

- b. That literal interpretation of the provisions of this ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance.

The Chair said that was the point the Board member Fitzgerald was making.

- c. That the special conditions circumstances are not the result of the actions of the applicant.

The Chair said but they do.

d. That granting the variance will not alter the essential character of the area.

The Chair said we are really dealing with b,c, and d.

Ward Kuhn said I think you have an issue on a. You have to determine what special conditions or circumstances that are unique and peculiar to this property exist that would warrant the variance. In other words that are unique or peculiar to the land, structure or building. This means they may have a practical difficulty that is because of a peculiar aspect of the property. It may have an odd shape to it. You have to find some special condition or circumstance that is unique to this property with respect to the land, structure, building or use that would cause you to exempt it from the general rule.

The Chair said you are saying that a can be included if you reject the request.

Ward Kuhn said if you cannot identify a special condition or circumstance which makes this property unique with regard to those four matters, if you cannot find those than according to the ordinance you cannot grant the variance.

Board member Fitzgerald said how about the use because it so little of a use.

Ward Kuhn said again you have to find that there are special conditions or circumstances in that use. Is this property in your opinion unique because of its use.

Board member Fitzgerald said it is seasonal and only has a little bit of use, he said I guess in season even. But he said next year he could start going high volume.

The Chair said we are only dealing here with the request for a display area in the 60 foot setback, that is all we are dealing with at this time.

Board member Fitzgerald said let's get something on the floor.

Board member Fitzgerald made a motion that we grant the variance as requested for Article 8 I commercial {c} parking area and drives shall be paved and curbed.

The Chair said oh you are jumping to that. I thought we were considering the display area.

Board member Fitzgerald said let's just see what happens.

Board member Fitzgerald said his reason was because of the type of seasonal use and low volume of traffic.

The Chair asked if MDOT had to be taken into consideration in your motion.

Board member Fitzgerald said because of the traffic coming in and out of the business.

Board member Volkening said the only issue he had with that is the curb part. He said to have it look like a parking lot you need the curbing there.

Board member Fitzgerald amended his motion that the parking area would have to be curbed but not paved. He said he agreed with that too because of the hill there something could get away there.

The zoning administrator asked if he could clarify curbed. Are you talking about railroad ties sitting there or are you talking about cement curbing. She said our ordinance requires cement curbing.

Board member Fitzgerald said pre-cast concrete curbs. The type you can buy that are pre-cast that you just sit on the ground, not 6 X 6 wolmanized or railroad ties.

Board member Volkening said something that would stay there and not move.

Board member Fitzgerald said it could be relocated but you would know that it is a curb.

The Chair asked Fitzgerald to repeat his motion.

Board member Fitzgerald said that his motion was to grant the variance as requested to Article 8 I and not require paving but would have to be curbed with pre-cast concrete curbs. He said the reason was for the lack of business in and out and the low volume of business and it is very seasonable.

The motion made by Fitzgerald was seconded by Volkening.

The zoning administrator said she could tell you that it is not low volume in the summer time. The neighbor Marilyn Van Dyke can tell you that it is not low volume in the summer time. I have been down there when I could not even pull in and had to back out onto US 31, because nobody knew where to go there was no defined parking.

Board member Fitzgerald said what difference will it make if it is asphalt or gravel as far as the volume of traffic. He said will it get you out of there faster if it was asphalt rather than gravel.

The zoning administrator said she thought it would be more defined once they pull in.

Board member Fitzgerald said he would want the parking area and drives curbed.

The zoning administrator said so volume is not the issue for you.

Board member Fitzgerald said well it is because asphalt holds up better than gravel with a lot of traffic.

The Chair asked Board member Fitzgerald how he would define volume.

Board member Fitzgerald said in comparison to other businesses along the highway.

The zoning administrator said remember about setting precedence.

Board member Volkening seconded Fitzgerald's motion.

Board member Schuster asked Ward Kuhn if we should take the MDOT decision into consideration. He said we do not know what MDOT is going to say. He said if they require it to be paved and curbed we do not know yet.

Board member Fitzgerald said they would not have any say in the parking area.

Ward Kuhn said they would require that their opening be paved and curbed.

Mr. Voss said that is one of the options.

Board member Fitzgerald said that only goes so far onto the property.

Board member Volkening asked if the site plan provided tonight had been approved by the planning commission.

The zoning administrator said it was a smaller version of what was approved by the planning commission. It is a snap shot of what was approved.

The zoning administrator said the only difference is that the one the planning commission approved did not have the proposed display area on it.

The Chair said if there is not anymore discussion we will call the vote on the motion.

Motion failed 2 yes 3 no.

Board member Fitzgerald made another motion. He said his motion was to deny the same variance request from Article 8 I commercial {c} parking areas and drives shall be paved and curbed. The reason given was that it is part of the planning and he saw no good reason, truthfully, to give a variance under section 15.4 He said there was no valid reason there. The motion was seconded by Board member Haight.

Motion carried 3 yes 2 no.

The Chair read the second variance request to have a display area in the 60 foot front yard setback. The display area would be 25 feet from the road right of way.

Motion made by Volkening to deny the variance to establish the display area in the 60 foot setback. The reason given was on the basis of Section 15.4 of the zoning ordinance in that there are no special conditions or circumstances by the applicant. Board member Fitzgerald said another reason would be that special conditions and circumstances do not result from actions of the applicant. When he bought the property he should have known the rules. He said that is part of it and it is an automatic denial. Board member Fitzgerald said on that basis he will second the motion.

Motion carried 5 yes.

Approval of the minutes

Approval of the minutes from the November 10, 2009 meeting.

Motion made by Fitzgerald and seconded by Volkening to approve the minutes as presented. Motion carried. 5 yes

The Chair asked if there was any public comment.

Mike Kronk said he would just point out that much of the decision making in this process was passed on to Ms. Baker, because she was allowed to participate with the Board discussion. The applicant wasn't. Technically you said that it was closed to the Board unless the Board addressed someone and I recall that there was comments from Ms. Baker without prompting from the Board. I am aware from the past that she has strong feelings in this case. I am putting on the record that she is not a member of this Board. She should not be participating except in response to questions once it becomes the Boards deliberations because as you will note I did not say anything and no one else except Mrs. Van Dyke said anything other than the zoning administrator. He said again she is not a member of the Board.

The Chairman said we had an open question on the floor and she was technically qualified to answer and we did allow that to happen.

Adjourn:

Motion made by Fitzgerald and seconded by Volkening to adjourn. Motion carried 5 yes.

Minutes respectfully submitted by Krysti Baker

Adjourn:



