

**ACME TOWNSHIP
Zoning Board of Appeals
January 10, 2002**

Thursday, 7:30 p.m.
Acme Township Hall
Acme, Michigan

Meeting called to order at 7:35 p.m.

Members present: J. Kuncaitis (Chair), L. Belcher, P. Collins, H. Smith

Members excused: N. Knopf

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** Kuncaitis expressed a conflict of interest regarding Application #2002-1Z. Smith will be asked to chair that portion of the meeting.

2. **Correspondence:** None

3. **Reports:**

a) **Status report regarding Steven Billette Pool Variance #2001-13Z** (Attachment A included and incorporated by reference): This Variance is officially off the docket.

Motion by Belcher, support by Collins that construction of the above ground pool on the Billette property at 5465 Bunker Kill Road shall be performed in accordance with the requirements set forth in Variance #2001-13Z. Any deviations from the conditions set forth shall require a new and separate variance application. Motion carried unanimously.

Kuncaitis excused himself from the Board and joined the audience.

4. **Hearings:**

a) **Public Hearing on Application #2002-1Z by Kelly and Kristen Schoonover, for a Conditional Permit pursuant to Section 5.3.4(2)c, Special Exceptions to allow for a land division creating a parcel of land of less than five (5) acres from a parcel of land located at 7641 Saylor Road and currently Zoned A-1, Agricultural** (Attachment B included and incorporated by reference): Belcher read the published Notice of Hearing into the record.

Public Hearing opened at 7:43 p.m.

Joe Makowski, the Realtor involved in the transaction, and Kelly Schoonover spoke in support of their application. They feel that their situation is suited to the aims of the ordinance. Smith asked Carl Brothers if his intent was to sell off the one-acre and leave as many acres as possible in agricultural production. Mr. Brothers responded that he would be able to farm the existing trees even if they are on property eventually sold to the Schoonovers, but when the time came to replace them he certainly wouldn't want to invest in placement of new trees on someone else's land. Mr. Brothers would like to become a cherry farmer if he can make it economically feasible. He'd rather not sell extra land to make up a five-acre parcel, and the Schoonovers would rather not own the cherry trees. Mr. Brothers actually hopes to plant additional trees.

Speaking from the audience, Joe Kuncaitis mentioned that a hearing was held several months ago regarding a request by Mr. Brothers for a variance of road frontage requirements for one of the lots Mr. Brothers is creating from this same parcel. Two of the parcels will be sold to Mr. Kuncaitis and his daughter, Evie Huver.

The parcel Mr. Kuncaitis would like to buy has cherry trees on it that he would be willing to lease back to Mr. Brothers to farm. He is uncertain of what the remaining productive life of the trees might be.

Smith was not present at the October meeting, but did review the meeting minutes. They indicate that Mr. Brothers stated that it is not his intention to subdivide his parcel, and that he would eventually like to build a personal residence there. In reviewing the minutes pointed out they indicate that Mr. Brothers did not plan to subdivide but would like to build his residence there. He asked if this objective had changed; Mr. Brothers indicated that it has not.

Discussion turned to the subject of the new Peninsula Township ordinance establishing a new residential home setback requirement from agricultural areas. Corpe mentioned the existence of the Subdivision Control Act and read the section relating to requirements for adjacent residential and agricultural uses.

Collins asked how long Mr. Brothers would plan to keep the land in production. He indicated that he would like to "make a go of it" if he can. He grew up in a farming family in Maryland. Currently, 20 acres are in trees currently. Mr. Amos would farm the land for Mr. Brothers and be compensated for his labor, but would not actually have a lease on the land.

Smith asked Mr. Schoonover if he is aware of the intrusive nature of many common farming practices. Mr. Schoonover responded that he is a long-term resident of the area and is familiar with the impact that living near an active farming operation can have on a residence.

Belcher asked whether creating a parcel smaller than the customarily allowable size would also have the effect of increasing the total number of land divisions possible from the parent parcel. Corpe explained that the number of land divisions a parcel is entitled to is limited in two ways. The Land Division act sets forth a certain number of allowable parcels per parent parcel, irregardless of the proposed size of the new parcels. The Zoning Ordinance allows parcels of a certain size in a certain district, so any given parcel can only be divided into as many different parcels as can be created that conform to the minimum lot size requirements. In any given situation, one or the other of these sets of requirements could impose limitations. For instance, if a parcel in the R-1 district is 3 acres in size, under the Land Division Act it might be entitled to four divisions. However, lots in the R-1 district must have a minimum size of 1 acre. The more restrictive of the two conditions will govern, so the maximum number of lots that could be created in this example is 3.

Doug White, 7626 Saylor Road noted that Mr. Schoonover states that he would not be bothered by necessary agricultural activities. However, there is no guarantee that if they were to sell the home, the next owners would be as tolerant. He is also concerned because while Mr. Brothers is expressing interest in maintaining a working farm on this parcel, he has already agreed to sell off 10 acres. Since he has been willing to sacrifice this much land already, how would it represent a hardship to him to divest himself of another 5 full acres? Mr. White likened the possible approval of the application to the opening of Pandora's box. Many more similar requests could be made.

Corpe mentioned that state law requires that a Right to Farm statement be printed on deeds to properties transferred which are in close proximity to agricultural areas. Mr. White agreed that this is true, but noted that many homeowners still seem to be shocked and upset despite the notice/warning.

Ken Engle, 6754 Yuba Road asked if the Ordinance section under which this application was made also allows 5 acre lots previously split from agricultural

property for residential use to be reabsorbed and split back out with only one acre? He also asked if the old farmhouse can be torn down and replaced.

Belcher asked if denial of the request would prevent any split of the parcel from occurring at all. Corpe responded that denial will not prevent Mr. Brothers from further dividing his parcel, but will cause him to be held strictly to the 5-acre minimum lot size requirement.

Rick Sayler, 8265 Sayler Road has looked at the survey and is glad to hear that the easement variance granted several months ago won't be used after all, and that a new easement meeting the ordinance requirements will be created. Mr. Sayler is a commercial fruit grower, and states that the lifespan of a cherry tree is 20 – 25 years. He believes that the trees on the Brothers property were planted circa 1980, so they have 3 productive years left at best. He certainly understands the desire to farm, but perhaps Mr. Brothers doesn't understand what he's getting into. This section of the Ordinance is little used, but seems more aimed at situations where one neighboring farmer buys another farmer out, and the selling farmer wants to remain in his home. It was designed with good intentions in mind, but in reality this hardly ever happens. Also, the survey as modified to show the proposed land division is inaccurate, showing a larger parcel than requested. In reality, a one acre will barely encompass the house itself. This is the second variance request received regarding this property, and there seems to be a lot of interest in large acreages in Acme Township in general. It might be nice to have a policy that before a parcel of 40 acres or larger can be divided or developed, the landowner/developer and the township staff should meet and devise a comprehensive plan for the entire parcel rather than lopping chunks off piecemeal. Mr. Sayler does not support the application because it wouldn't fit the character of the area and could have a negative effect on property values. Former Supervisor Jim Maitland once said to him that the biggest mistake he ever made was allowing non-conforming lots to be created, even with the best of intentions.

Public Hearing closed at 8:15.

Smith mentioned that from his perspective as a Planning Commissioner, the splitting off of small parcels throughout the township is a concern and represents poor planning practices. It creates a hodge-podge development pattern that is hard to deal with. He agrees that ideally, developers should work in partnership with the Township to develop a plan to preserve open space while also realizing the value or income the property can generate.

Belcher has been torn on this issue, trying to understand both sides and keep an open mind. The size of the lot is a concern, but also realistically it would seem like someone else owned the front yard. He thought he house sat far back on the parcel, but Corpe pointed out that actually it is likely too close to the road and as such is a grandfathered nonconforming structure.

Collins also came in with an open mind but based on what he's heard tonight leans towards the detriments of the proposal outweighing the benefits.

Motion by Collins, support by Belcher to deny Application #2002-1Z, because it has not been adequately demonstrated that farmland would be lost from production should the smaller lot size be denied. Motion carried unanimously.

Kuncaitis resumed the Chair.

5. Other Business:

- a) **Request for Interpretations regarding Shell Oil gas station:** Corpe has been working with Paul Schmuckal, President of Schmuckal Oil regarding some concerns about the Shell gas station on US 31. The first question relates to the interpretation of

signage area calculations. Gas stations enjoy a unique flexibility in signage size, because our ordinance permits them an additional 12 square feet to display fuel prices on each side of the freestanding signpost. Mr. Schmuckal would like to change his existing, nonconforming rotating sign over to the new corporate design standard pylon. It appears, however, that even the smallest available design would call for more signage area than our ordinance permits. He is asking if there is room for flexibility in the sign area calculation that would allow us to consider a rectangle confined tightly to the outlines of the message as the sign area, rather than counting the whole module on which the lettering appears.

Smith noted that traditionally a distinction has been drawn between the sign itself and the pillar, post or other support it rests on. He feels that the signage allowed at Tom's Food Market was a mistake because they originally were allowed to place signage down the width and length of the pylon. When they remodeled their store recently, they were required to reduce the sign message area down to the standard 32 sq. ft.

Kuncaitis agreed that in the past, signage posts have been considered purely decorative. He is concerned with the particular sign design Shell has adopted because it is solid from the ground up, which may pose driver visibility concerns.

Belcher would not be inclined to interpret the sign area calculations creatively. In his mind if the panel on which signage is located is 5' wide, the sign itself should be considered to be the full 5' wide. Sign ordinance variances are rarely granted.

The second issue involves the fact that the Shell station exterior was recently modified. Because the station sits within 500' of a public area (Bayside Park), our ordinance requires that changes to the building exterior be approved by the ZBA prior to implementation. This step was not taken during the recent remodeling. Corpe has researched the gas station's history extensively, and has found that while the station was developed after this ordinance requirement was put in place, this step has never been required before. The station was originally granted approval by action of the Acme Township Board alone in 1982. When they sought to remodel and change out some underground in 1994, they specifically applied to the ZBA for the appropriate hearing. Susan Cronander, the Zoning Administrator at that time, actively steered them away from holding such a hearing, refunding their application fee and referring the matter to the Township Board as a minor change to the existing Special Use Permit. While Corpe does feel that Schmuckal Oil should stay up-to-date on ordinance requirements before undertaking site changes, she is also inclined to recommend leniency regarding the current changes because they clearly had no reason to expect an issue existed.

Kuncaitis noted that the township has always tried to encourage the use of earthtones. When the building was painted grey in 1994 there was concern, but it was had already been done and therefore seemed irreparable. He recalled that when Northwestern Savings Bank & Trust relocated their building from Benzie County to the corner of Bunker Hill and US 31 it was pink, and the township required that the exterior be refurbished in brick. The township wants to allow businesses to be competitive, but also to present and attractive and somewhat muted appearance. To some extent, the aim is to keep different businesses from trying to outdo each other in garish appearance. As another example, Hot & Now wanted to locate approximately where the McDonalds is now, but the Township would not agree to their standard white, red and purple color scheme. The franchisee could not live with this requirement and located in Garfield Township instead. Kuncaitis recalls that the ZBA used to hold meetings regarding building appearance at the building in question so that the visual impact could be better assessed. This gas station has a big impact in the Acme Community, and the possibility of a perception that a new precedent for dealing with these situations has been set is a real concern.

Smith is primarily concerned about the lighting under the canopy, which does not

appear to be from a high-pressure sodium source. Corpe is unsure if these lights have been in place since before our requirements were in place, or if they are new. Smith is always concerned when a property owner makes a change and comes in for approval after the fact. The Township tries to be considerate and allow for errors or lack of knowledge.

Mr. Schmuckal was unaware of this particular issue until he arrived for this evening's meeting, and gave a brief summary of the history of the property from his perspective and an overview of the most recent design changes. He confirmed being unaware of the exterior design review requirement, having dealt with the Township twice without the issue coming up.

Kuncaitis doesn't see how making Shell repaint again now will help, and the lighting issue is likely to be addressed soon. But the fact that this building has been modified as it has been means that perhaps we have to allow the building across the street to do the same thing if they ask. He urged Mr. Schmuckal to be attentive to the review requirement in the future, but did recognize that he had been directed away from the required ZBA hearing last time around. The ZBA is separate from the Planning Commission but takes a look at what the township wants overall in a similar way.

The ZBA further recommended that Corpe ask the Planning Commission to consider amending the Zoning Ordinance to redirect the exterior design hearings to that board, as it is uncertain what the rationale for having the ZBA hold this responsibility might be. In general, the Planning Commission considers exterior design issues as part of Special Use Permit applications or amendments, so it would make more sense for them to retain this function in all situations.

6. **Approval of minutes from the July 12, 2001, October 11, 2001, November 8, 2001 and December 13, 2001 regular meetings (Attachments C, D, E and F included and incorporated by reference):** A quorum of the members present on October 11, 2001 are available tonight. Approval of minutes from the other meetings will be deferred to February 14, 2002.

Motion by Belcher, support by Collins to approve the minutes of the October 11, 2001 meeting. Motion carried unanimously, with Smith abstaining because he was absent from that meeting.

Meeting adjourned at 9:35 p.m.