EMMET COUNTY ZONING BOARD OF APPEALS
TUESDAY, FEBRUARY 19, 2019
EMMET COUNTY BUILDING
COMMISSIONERS’ ROOM
200 DIVISION STREET
PETOSKEY, MI 49770

MEMBERS PRESENT: B. ALEXANDER, M. BUDAY, T. DRIER, B. BATES

ALTERNATE MEMBER PRESENT: J. JONES

MEMBER ABSENT: J. MALOTT

STAFF: T. DOERNENBURG. M. LINEHAN

I. Call to Order and Attendance
Chairman Alexander called the meeting to order at 6:00 PM. All members were present except Malott.

II. Minutes of January 15, 2019
Buday made a motion to approve the January 15, 2019 minutes as presented. The motion was seconded by Bates and passed by unanimous voice vote of the members present.

III. Cases
1. CASE #PZBA18-021 Ironwood Construction Co. for Shawn Wonnacott, EXPANSION OF A NON-CONFORMING USE, 4482 Pickerel Lake Rd, Section 35, Bear Creek Township

Legal Notice: A request by Ironwood Construction Co, for Shawn Wonnacott for expansion of a non-conforming use for the business located at 4482 Pickerel Lake Rd in Section 35 of Bear Creek Township. The property is zoned R-1 One and Two Family Residential and is tax parcel 24-01-16-35-200-022. The request is to add onto the existing commercial building. The review is per Article 25 of the Zoning Ordinance.
Packet Items: Revised zoning evaluation form, revised site plan, Springvale Twp minutes,

Doernenburg presented this case. It was originally heard last month. The property is zoned FF-1 and is located on the south side of Pickerel Lake Road. The parcel is adjacent to R-1 zoned properties. The building on this site has been used commercially since before zoning. Historical records show auto repair and sales facilities as previous uses. Concerns were raised last month regarding the proposed addition. The site plan has been revised to reflect those concerns. The size of the addition has been reduced, the lean-to has been modified to be incorporated into the side of the building instead of closer to the outdoor wood boiler, screening has been identified and added to, the dumpster is to be screened, and lighting is to be compliant with ordinance standards. The revised site plan dated 2/7/19 and revised staff report were included in packets. Additional tree screening has been provided in the front and windows have been added to the front of the addition to add roadside character. The majority of storage is proposed to be inside and the outdoor storage
will be behind the building. Site plans, photos, and elevations were shown.

Serenity Dankert, Ironwood Construction, stated that she took the comments back to her client after the last meeting. He had looked for other locations suited for manufacturing in the County but there is nothing in the immediate area. In order to find a spot, he would have had to relocate to Alanson or Pellston and he is not interested in doing that. They discussed reducing the size of the addition and he worked with his staff and reviewed his business plan to find the minimum size that they could work with. They were able to pull the building 20’ off of the end of the property. Dankert suggested the window additions for a more residential look. Evergreen screening was added along the road. An alternate location for the septic has been identified along the west end of the building. The current septic is on the east side of the building. They also want to do an overbuild on the flat section of the roof with a gable and a 1:12 pitched roof. Alexander asked how many trees are to be added. Five new trees are identified at the road.

Buday stated that the revised site plan is improved. He likes the scale and that the building is pulled in the 20’. He stated that he can see how the addition can clean up the yard. He is happy with the changes. He asked if equipment waiting to be repaired would be located in the front or the back of the building. Dankert stated that the parking is in the front and doesn’t think that there would be any way that they could put anything there. The outdoor storage is proposed behind the building.

Drier stated that she is happy with the changes and their willingness to work with the comments from the last meeting.

Jones stated that he is happy with the plan.

Bates stated that he is also encouraged by how much they have responded to the comments. He thinks that bringing the building in 20’ helps with the grade as well. He asked about the electrical pole; is this proposed to be underground now or will it be reattached to the addition? Dankert stated that there is no underground power in the proposal.

There was no public comment on this case.

Alexander stated that likely the doors will be open on the building in the summer but likely there would be no more noise than there is now. Bates stated that there was no sound heard when he was on site today.

Buday made a motion to approve Case PZBA18-021, Ironwood Construction Co for Shawn Wonnacott, for expansion of a non-conforming use at 4482 Pickerel Lake Road, Section 35, Bear Creek, tax parcel number 24-01-16-35-200-022 as shown on the revised site plan dated Received February 6, 2019, based on the facts presented in this case, the proposal meets the standards of Section 23.01 A), B) and C), and on condition that the existing exterior lighting on the property be brought into compliance with the current Zoning Ordinance standards and that the standards of the Road Commission, Fire Chief, and Health Department be met. The motion was seconded by Bates and passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Buday, Jones. No: None. Absent: Malott.
2. CASE #PZBA18-023  Bill & Alisa Winslow, FRONT & SIDE YARD SETBACK VARIANCES, 5973 Graham Rd, Section 19, Springvale Township

Legal Notice: A request by Bill and Alisa Winslow for front and side yard setback variances to apply to an existing residential accessory building located at 5973 Graham Rd, Section 19, Springvale Township. The property is zoned RR Recreational Residential and is tax parcel 24-14-17-19-301-013. The request is to allow the existing garage, damaged by tree-fall, to be remodeled with a height increase to 15’9” with dormers. The existing garage is approximately 13 feet from the Graham Road right-of-way (27 ft. setback variance) and 7 ft. from the side lot line (3 ft. setback variance). The request is per Articles 23 and 25 of the Emmet County Zoning Ordinance.

Packet Items: No new information

This property is located on the northeast side of Graham Road. It is a non-conforming lot with an average width of 73.935’ and an average length of 133.5’. The existing accessory building encroaches into the side setback 3’ and into the front yard setback 27’. The building was damaged by a tree in 2018. The applicant discussed repairing the building with Doernenburg and since he wasn’t going to demolish more than 80% of the structure she advised him that this could be approved administratively. He then decided to add the height and dormers which requires ZBA review. Doernenburg explained that in section 1900 note H, the administrator is allowed to take the average setback of the structures on either side of the building to come up with a reduced setback. In looking at the aerial, it appears that most structures are either at or closer to the road than this building. This rule wasn’t used in this instance. The lot coverage is met at 27%. Graham Road is a narrow, dead-end road that ends at Crooked Lake. The township has recommended approval. Photos and the site plan were shown.

Bill Winslow, applicant, stated that when the structure was damaged by the tree they started to look into rebuilding it. An addition was put on their house a couple of years ago. This structure is currently built as a pole barn and doesn’t really match the house appearance so he decided to add the dormers and vinyl siding and windows to better match the house and the community. The dormers are non-functioning storage space. The increased height is 2’10” to get the 6:12 roof pitch to match the house. Alexander asked if the cupola is included in that height change. Winslow stated that it is not. He stated that this will cause no view obstructions as he owns the lot behind and the neighboring house is at least 40’ above Graham Road. The neighbors that he has spoken to are pleased with the plan.

Alexander asked about the fence that is right up to the building. Winslow explained that this is his parents’ property and fence. When he had a survey done for the house addition he realized that the fence is about 5’ into his property. Since it is his parents, he is not requesting that it be moved but it does give the impression that the property line is closer than it really is. Alexander asked if there is any reason that the whole garage can’t be moved back to where the new entrance would be. Winslow stated that besides the expense, it would take the building pretty close to the house. He wants to keep it in the existing footprint and he is not interested in moving it. Alexander asked what he has planned for the runoff. Winslow stated that it would be the same as it is now. There are no drainage issues. He has stone on one side and landscaping on the other. Extensive
landscaping and drain pipes are under the walkway and water disperses to both the east and west side of the home.

Photos were shown. There is a grade difference between the buildings.

Jones asked if there are steps coming down from the porch addition. Winslow stated that there are. Currently they exit out on the west side but they have issues with snow and ice now. Alexander asked if this will have an asphalt or metal roof. Winslow stated that it will be asphalt. Jones stated that he would want any motion to include a stipulation that the building would not be used for living quarters. Alexander asked if they had any intention of using it this way. Winslow stated that they didn’t. Jones stated that if it is not called out, it could be converted to living quarters in the future.

Drier stated that she had some concerns originally but feels that her questions have now been answered. She stated that the damage of over 80% had been mentioned and asked for that to be explained. Doernenburg stated that if a building is demolished more than 80% the non-conformity is eliminated. They could have repaired the building without a variance. Drier asked if they are going to demolish the building and build new from the ground up. Winslow stated that the pole wall structure stays, but all of the roof structure was destroyed so that will be replaced.

Bates stated that the building is incredibly close to the road but it doesn’t seem feasible to him to move it. He was concerned with the fence but now realizes it’s family. The proposal seems like an upgrade. The pole barn style doesn’t jive with that area and it matches much better this way.

Buday stated that he has no issue with the proposal and thinks it is an improvement. He is concerned with the amount of deconstruction and what is to be rebuilt. Is there an attic space? Winslow stated that there is about 4’ there. Buday stated that he is concerned whether the posts can support the added weight. Is it somehow monitored to make sure that he doesn’t demolish past the 80% mark? Doernenburg stated that it is monitored, however, she added that likely if the averaging rule was applied, she could administratively approve a 15’ setback which would mean that they would be requesting a 2’ variance. Buday asked if the building department said that it would have to be tore down, would that change what is decided here? Doernenburg stated that if the motion indicated that a certain percentage had to be retained, and that was not possible, then it would have to come back to this board. If it was demolished a 2’ variance could be requested or it would have to be brought into compliance at that time.

Bates asked if the setbacks were met if the 80% ruling is moot. Doernenburg stated that it would be but both the front setback and the 10’ side setback would have to be met.

There was no public comment on this case.

Alexander stated that there is obviously a serious problem that needs to be repaired and although he could probably brace up what is there and continue on, he feels that this will be an improvement.

Bates made a motion to approve Case PZBA18-023, Bill and Alisa Winslow for a front yard setback variance of 27 feet and a side yard setback variance of up to 3 feet for a residential accessory building at 5973 Graham Rd, Section 19, Springvale Township, tax parcel number 24-14-
17-19-301-013 as shown on the site plan and elevation plans dated Received Dec 21, 2018, based on the facts presented in this case, the proposal meets the standards of Sections 23.01 A), B) and C), and further to approve the requested setback variances because the standards of Section 25.04.3 have been met, Springvale Township has unanimously recommended approval, and on condition that the building is not to be used as living space. The motion was supported by Jones and passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Buday, Jones. No: None. Absent: Malott.

3. CASE #PZBA19-001 Andy & Tracie Roush, EXPANSION OF A NON-CONFORMING USE, 3720 Atkins Rd, Section 11, Bear Creek Township

Legal Notice: A request by Andy and Tracie Roush for expansion of a non-conforming use at 3720 Atkins Rd, Section 11, Bear Creek Township. The property is zoned R-1 One and Two Family Residential and FF-1 Farm and Forest and is tax parcel 24-01-19-11-001. The request is to allow expansion of the winery processing facility and patio area and to permit a dwelling to be utilized in conjunction with the winery. Review is per Article 23 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, site plan 1/25/19, elevations, floor plan, renderings, staff report

Doernenburg stated that Brian Bates lives within 300’ of the subject property’s boundaries. This creates a conflict of interest. Bates left the room.

This property is located on the south side of Atkins Road and is 22.67 acres. The property is zoned R-1 with a small FF-1 section. Doernenburg explained that when the Right to Farm Act was first established; they came out with GAAMPs (generally accepted agricultural management practices). Over time these have been changed and added to and can change annually. Part of the GAAMPs include farm markets. This winery was approved administratively in 2012 under that provision. Since then, approving these types of uses with this provision has been questioned and changed. Since it was approved in 2012 though, it is now considered a non-conforming use. The Planning Commission is currently reviewing potential text amendments to allow for wineries but this has not been adopted. The current request is to expand the winery and the patio area. They also are requesting a new guest house. Doernenburg explained that she could administratively approve the guest house but since it is proposed to be used in conjunction with the winery, she thought it should be reviewed together. The site plan and elevations were shown. The top level would be an addition to their deck area which is the roof of the proposed expansion of their production area. This area is currently 2,133sf with a 711sf storage area. The addition would be 2,400sf lower-level production and 2,400sf ground level patio area. The proposed guest house would be 1,152sf and located to the south of the current house/winery. The setback standards are met for both the proposed addition and guest house. The winery is setback 900’ from Atkins Road and 50’ from the west property line. The guest house is proposed to be setback 1,200’ from Atkins Road and 100’ from the south property line. The building is proposed to be built into the side of the hill which would make it virtually invisible on three sides. Surrounding zoning districts include R-1 to the north, east, and west and FF-1 to the south. Surrounding uses include a 75-acre commercial farm and 5.15-acre...
residence/farm to the east, dwellings, one with a home occupation, to the north, dwelling on 38.5 acres to the south and dwelling on 6.83 acres and 40 acres of farmland to the west. The elevation sketch and renderings show that the guest house will be in the hillside and will have a green roof. It will be visible only from one side. Existing conditions of the site were shown in photos. The floor plan of the house was shown as well as the site plan. Doernenburg stated that she did receive a call of concern from the neighbor that has the home occupation concerned with fireworks and weddings late into the night. This proposal wouldn’t allow that but if they did want to do so in the future they would be reviewed separately. The fireworks wouldn’t be regulated through County Zoning.

Andy Roush, applicant, stated that they have never done any weddings or fireworks. The main floor above ground is 2,100sf with a 14’ tall basement. It cannot be seen from the road. They are essentially extending their basement out. Between all of the equipment and the size of their production, they need to expand. The guest house is primarily for family/friends as they have a four-person family that lives within 1,000sf of space. Alexander asked if the guest house is for personal use or if it would be part of the winery. A. Roush stated that they would want the ability to rent it to couples who would want to spend the night at the winery. As for the addition, they have pallets stacked to the ceiling and no physical space left. Alexander asked about the steel building on the property. A. Roush explained that this is filled with farm equipment. Tracie Roush stated that half of their property is grape vines. Alexander asked about the patio area. A. Roush stated that they will have poured walls and it is the cement roof and decking over the addition area. It is level with their existing deck. Alexander asked if they are planning to enclose or roof over this area. A. Roush stated that they were not at this point. Alexander stated that he has more of an issue with the guest house at this point with all that is happening with rentals. There is a complication of more traffic at the road. A. Roush stated that they have been operating as a commercial facility for five years. A couple staying in a guest house doesn’t change the traffic of the winery. Alexander stated that this may be why the neighbor was concerned thinking that those staying there would be having events. A. Roush stated that they live on the property and haven’t had any of these issues. T. Roush stated that they would write in the rental contract that it can only be occupied by two people and that they are not allowed to have gatherings. She stated that they are required to live on the property and would know if these stipulations were being violated.

Buday stated that the site plan shows the proposed addition next to the residence; is this where you live? A. Roush stated that it is both their residence and tasting room. They have an existing walkout with a garage now, the proposed expansion is just an expansion of the underground facility. Buday asked if this is what would be the rental. Doernenburg showed him that the rental is proposed as a separate building to the south. Buday asked if there are any issues with rental properties in regards to zoning. Doernenburg stated that it is not an issue and that we do not regulate short term rentals. Guest houses are permitted and there are no short or long term rental rules that would affect this. Alexander asked if there have been neighbors that have had issues with rentals such as this within the County. Doernenburg stated that there have been. Jones stated that there are quite a few rentals in the County and any regulation would open up a can of worms. Doernenburg stated that there is also proposed legislation that would allow for any rentals to be regulated as single family dwellings. Alexander stated that Grand Traverse County has been trying
to regulate rentals recently. Jones stated that many in our area were built and approved as an accessory building with an attic/loft area and likely now have full living units in them.

Buday asked if built as a separate accessory building what the limitations would be. Doernenburg stated that in the R-1 district, one accessory building per five acres up to 1200sf in size are allowed. She noted however that since this is a commercial farm, there would be no regulations on amounts or sizes for farm use buildings under the Michigan Right to Farm Act. This case is coming here only because the proposal expands the winery which is now considered a non-conforming use. The existing accessory building is at the maximum allowed size but it could be enlarged if used for the farm under the Right to Farm Act.

Drier stated that she had questions regarding the rental but those have been answered. There are no winery guidelines in the ordinance yet.

Jones stated that if he was a resident of the area he would be much happier with the winery and farm activities than he would 25-30 houses on the property. This leaves a nice open space and vines don’t disturb anyone. Alexander stated that 30-40 head of cattle smell different than grape vines. Jones stated that in his opinion, all of this should be under the Right to Farm Act.

Alexander opened the floor to public comment.

Michele Dainoviec and Bob Peterson are neighbors to this property on the west side. Their property ends at the split of the Roush’s driveway to the winery. Dainoviec stated that their house is located in the area across from the Roush’s pole barn. They look out on the pole barn and the driveway. They see all of the traffic. They are concerned about the deck with people out there and feel that the noise through the woods will come right to their back yard. They deal this with other neighbors and when they have people on their deck the noise carries right down to them. A. Roush stated that they have a deck currently and have never received a complaint from the neighbors. Dainoviec stated that the deck addition would be right up to their back yard. T. Roush pointed out that the proposed deck is 500’ from where their neighbor’s house is. Dainoviec stated that she thinks noise will be an issue. T. Roush stated that they obey all ordinances. They don’t do weddings because they end later in the night. All of their events end at 8:30 p.m. and she requires everyone off of the property by 9:00 p.m. They want to be here for the next thirty years. They know that they have neighbors and respect that by not going any later than 9:00 p.m. whether it is a public or private event. Alexander stated that they may have these plans and intentions now but he can see the neighbors’ concerns as this could change with a future owner. A. Roush stated that it may even be a couple of years before the deck would be used as they would work on the production addition first and then the deck.

Jones asked if it would be possible to add some evergreen trees towards the neighbors’ houses. A. Roush stated that they planted 75 trees along that whole property line three years ago.

Bob Peterson stated that they are only 50’ from the property line; how much would the deck come towards the line? A. Roush stated that it will be 25’ from the property line but that area that is close to the house/deck is not their (Dainoviec/Peterson) property. He pointed out where their property is
on the site plan.

Alyce Conrad stated that the board needs to be very conscious of the noise and traffic. It is a suicide road now with lots of hills.

Drier asked if we can regulate the hours of operation. Doernenburg stated that the ordinance allows reasonable conditions that are related to the use to be added when requesting a variance. Drier asked if it could be added since the applicant has offered limiting the hours. Doernenburg replied that it could. She stated that no fireworks, no weddings, and the hours could be put into any motion. A. Roush stated that they have operated 11am-6pm as standard hours and have never gone past 9pm however he is not crazy about adding restrictions to his property. Dainoviec stated that they have had no concerns as of yet but sound carries. Doernenburg stated that 10pm is the standard for weddings.

Buday stated that since this was approved originally in error he has concerns that this can keep growing and get out of control. Can we add something to the motion that would make them come back for further changes? Doernenburg explained that if the ordinance changes it could allow this use as a use by right or a special land use. Any change of use would require action by the Planning Commission or Zoning Board of Appeals. If the ordinance changes, they would have to go through the proper review process in place at that time.

Alexander stated that the traffic concern is well taken. T. Roush stated that the Road Commission has just finished up re-doing Atkins Road. They reduced some of the hills to improve sight distances. Alexander asked if they have a stop sign at the end of their driveway. T. Roush stated that they have caution signs. Alexander stated that he thinks they need a stop sign. Jones stated that there is nowhere in the ordinance that says we can require this. Alexander stated that from a safety aspect this should be a concern. Buday stated that since this is a commercial operation it would be safer if it were fully curbed. Doernenburg stated that this would not be our call; it would be the Road Commission’s but she thinks it is curved currently. Dainoviec stated that there used to be hidden driveway signs that were removed during construction and never put back up. T. Roush agreed saying that they need to be put back up since they paid for the signs. Doernenburg stated that she will bring it up with the Road Commission.

Drier stated that she doesn’t have issue with passing part of the request but would like to review the draft motion for revisions. There are questions with the patio for noise and hours of operation. A. Roush stated that the proposed time for wineries in the draft is 10pm. T. Roush stated that they shouldn’t be any different than anyone else. Drier stated that she is not comfortable with the “adverse impact” statement. Alexander stated that any use, commercial or otherwise, will have an impact on the community.

Ethan Swiger, neighbor across the road, stated that he is here to voice his support to what they have going on. They are well removed from the road and are pretty low impact.

Drier made a motion to approve Case #PZBA 19-001, Andy & Tracie Roush for expansion of the winery processing facility and patio area and to permit a dwelling to be utilized in conjunction with
the winery/residence at 3720 Atkins Road, Section 11, Bear Creek Township, tax parcel number 24-01-19-11-100-015 as shown on the site plan dated received January 24, 2019, based on the facts presented in this case, it meets the standards of Section 23.01 A), B) and C), and it will not cause an adverse impact on the use and enjoyment of property in the neighborhood or zoning district. The approval is subject to the following conditions: The patio area will have a 10:00 p.m. cutoff time, there will be no fireworks or wedding ceremonies and/or receptions, and this board recommends the installation of a stop sign at the end of the driveway. The motion was supported by Jones and passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Buday, Jones. No: None. Absent: Malott.

IV. Public Comments: None

V. Other Business:
   • Enforcement Report: Distributed with some discussion.

VI. Adjournment:
Alexander called the meeting adjourned at 7:40 PM.

Minutes Certification:

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Mark Buday, Secretary

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Date