EMMET COUNTY ZONING BOARD OF APPEALS
REGULAR MEETING
TUESDAY, NOVEMBER 19, 2019 - 6:00 P.M.
EMMET COUNTY BUILDING
COMMISSIONER'S BOARDROOM
200 DIVISION ST
PETOSKEY, MI 49770

AGENDA

I CALL TO ORDER & ATTENDANCE

II MINUTES OF SEPTEMBER 17, 2019

III CASES

NEW CASES

1. Case #PZBA19-014 Wayne Shotwell for Belle Tire, HEIGHT VARIANCE-
Flagpole, 2150 Anderson Rd, Section 18, Bear Creek Township

2. Case #PZBA19-015 McBride Remodeling for Matthew & Lissie Canzono,
SIDE YARD SETBACK VARIANCE, 4972 Lower Shore Dr, Section 30, Friendship Township

IV PUBLIC COMMENT

V OTHER BUSINESS

- 2020 Meeting dates
- Enforcement Report

VI ADJOURNMENT
EMMET COUNTY ZONING BOARD OF APPEALS TUESDAY, SEPTEMBER 17, 2019
EMMET COUNTY BUILDING
COMMISSIONERS’ ROOM
200 DIVISION STREET
PETOSKEY, MI 49770

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

ALTERNATE MEMBER PRESENT: C. LIVELY (Alternate Member)

MEMBER ABSENT: J MALOTT

STAFF: N. SALAR, 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 August 20, 2019
Drier motioned approval of the August 20, 2019 minutes as presented. The motion was seconded by Lively and passed by unanimous voice vote of the members present.

III. Cases
1. CASE PZBA 19-011
Richard Simon for Vincent Simon Estate, Modification to private road width standard, 4028 River Road, Section 28, Bear Creek Township

Legal Notice: A request by Richard Simon for Vincent Simon Estate to allow access to more than three parcels on an existing private road less than 50 feet wide on property located at 4028 River Road, Section 28, Bear Creek Township. The property is tax parcel 24-01-19-28-100-008 and is zoned FF-1 Farm and Forest. The request is for an exception to allow a private road narrowing from 50 feet to 23.19 feet per Section 26.13.7 of the Zoning Ordinance.

Packet Items: Updated site plan

Salar noted that this case was reviewed last month. The parcel is on the west side of River Road. The request is for an access road of less than 50' in width. This access is currently for five parcels. The parcel is zoned FF-1. The site plan survey was shown. Originally the request was for one point in the road to be 23.19'. It was revised after obtaining an easement from a neighbor and now is 40' wide at the narrowest point. The access to the existing parcels is non-conforming and was created through quiet title. A letter of support and a letter of opposition was received. Along with the revised site plan an updated plan for parcel 2 that shows all buildings on the site was submitted. There is a shed and a barn which would fall in the easement and a building that would sit within the front setback. There are two residences on the lot both

Emmet County Zoning Board of Appeals Meeting Minutes 09/17/2019
which appear to have been permitted.

Alexander stated that he was happy to see that some property was able to be gained through the easement.

Richard Simon, applicant, stated that they were able to enlarge it some but still would need a 10’ variance. The narrowest part is now 40’ wide. Alexander asked what will happen with the electric poles and the buildings that are in the easements. Simon stated that they will have to apply with the power company to move poles. Alexander stated that he would think that the poles should be moved first. Are we only concerned with the section from River Road to the property? Salar stated that this is the area in which the bottleneck is, after that the easement is 50’ wide again. Alexander asked Simon if the neighbor was not able to give any more for the easement. Simon stated that she can’t because of her building located on 200-018.

Drier stated that her concern was with the mobile home to see if it was permitted. Since then, the permit has been found from 2003. She stated that she still is concerned about emergency and fire access. How would a motion be worded to be sure that the buildings and poles are removed? If this moves ahead, a motion would have to have restrictions included.

Lively stated that when he suggested the easement from the neighbor last month he was hoping that they would gain the whole width needed. The least common denominator in this whole situation is that restriction. Anything new developed on the larger parcel would require the 50’ wide access. He asked if another 10’ easement is possible from the neighbor. Salar stated that the 40’ is the front setback. The house would be in the setback if it was moved anymore. Simon added that there was a lawsuit settled for the driveway to the north and they won’t budge. He doubts that the other neighbor would be willing or able to give anymore.

Alexander stated that it seems that 40’ would be adequate if the road was wide enough but it isn’t very wide.

Bates stated that it seems that the parcel owners are stuck between a rock and a hard place but he does feel better about a 40’ wide access than he did last month.

Buday asked what happens when the larger parent parcel becomes something more in the future. Are they aware of the requirements for roads, turnarounds, etc. He cautioned making sure to look to the future with any decision made tonight. Any new development would be a whole new ball-game. This review is only for this section. Simon stated that this is a good point. He stated that he has all of the required specs from the County as to what they would need and would be required should they develop that land. He is aware of all of this. At this point they have gotten as far as this pinch point in the access. The steel building will be easy to move, the barn a bit more difficult. The power poles need to be moved.

Lively stated that if you look at some of the other subdivisions in the County they have a single ingress/egress and they don’t seem to be 50’ wide. Alexander stated that the fact that the requirement was 30’ wide for so long and was increased to 50’ tell him that it obviously became an issue and a need to expand that minimum. Last month it was mentioned that school buses didn’t go down that road. This could change at any time.
Drier stated that she is a little more concerned now after the comments that they are looking into what they would need to do with the property; it sounds like they are thinking of putting in more homes. They wouldn’t have gone and looked at drainage and such if they weren’t. Likely there would be families in there if this happened.

Alexander stated that the removal of the buildings and the power poles is something that will have to occur; the poles won’t be cheap to do. He stated that the applicant has said they’d like to divide the parcels and likely it will happen. Simon stated that there is no one in the family that can afford to put a road in there. There will be eight of them owning the larger piece. This would have to come back for approval and likely wouldn’t happen for 15-20 years down the road.

There was no public comment on this case.

Bates stated that this review would not be supporting a subdivision, it is allowing parcel two to be a stand-alone parcel. Alexander stated that the variance request is for the road width itself. Drier stated that she feels better that it is 50’ wide past this point.

Bates made a motion to approve Case PZBA19-011, Richard Simon for Vincent Simon Estate for a variance to the width of a private road to allow one additional lot split on tax parcel 24-01-19-28-100-008, 4028 River Rd, Section 28, Bear Creek Township as shown on the survey dated 9/10/19, based on the facts presented in this case, and because no good or practical purpose would be served by strict compliance with the standards of Section 26.13, the new lot and existing residential structure are conforming, the modification will not have a negative impact on adjacent properties and on condition that the 24x32’ barn (dilapidated) and “steel shed” be removed as well as the obstruction of the utility poles be adjusted to be outside of the 50’ easement to allow for a 40’ road width beginning at parcel 2 extending to the east edge of parcel 2 only. Any remaining portions or future portions of the easement are to be 50’ in width. The motion was supported by Lively and after some discussion and clarifications of the wording of the motion, passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Lively. No: None. Absent: Malott. Abstain: Buday (wasn’t present during the last review, Lively voted as he was present during the original review.)

2. CASE PZBA 19-012

DWS Builders, Inc for Johnson Trust Company, Front and Waterfront Setback Variances, 6151 Graham Rd, Section 19, Springvale Township

Legal Notice: A request by DWS Builders of Michigan Inc for Johnson Trust Company for setback variances and expansion of a non-conforming use at 6151 Graham Rd, Section 19, Springvale Township. The property is zoned RR Recreational Residential and is tax parcel number 24-14-17-19-301-026. The request is for a front yard setback waiver (40 ft. setback variance) and a waterfront setback variance of up to 34 feet to allow a second story addition to the existing non-conforming cottage. The reviews are per Articles 23 and 25 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, variance request description, photos noting changes, floor plan-1st flr existing, 2nd floor addition plan-new, elevation plans, site plan, zoning evaluation, letter from Haggard’s P&H, letter from Nannie Turrell, three additional support letters passed out at meeting provided by applicant.
Salar presented this case. The parcel is located at the end of Graham Road on Crooked Lake. The aerial was shown. The parcel is zoned RR. There is an existing residence and existing guest cottage located on the parcel. The request is to allow a second story addition to the cottage. Photos, floor plans, and elevations were shown. The cottage is non-conforming both in use (there is an existing residence on the property as well) and location (it is located 1.5’ from the right-of-way and 13.5’ from the water). There is a utility pole that is very close to the building. Salar noted that current setback standards for this parcel would be 40’ from road right-of-way, 10’ on the sides, and 60’ from the water. What is being requested is 1.5’ from the road right-of-way and 32’ from the water. The township has recommended approval for this current request. There was a variance granted for a residential addition to the main residence in 1998. Letters from neighbors have been received both in support and opposition to the project.

Alexander asked for clarification on the distance to the water. The cottage is located 13.5’ from the water to the deck and 17’ to the cottage.

Julie Strickland, owner and Patrice Carlson, DWS Builders were present.

Carlson stated that they met with the township several months back and were asked to identify alternate options with the owner. They went back and forth on some options and decided to withdraw the previous case and start over at a later date. They have adjusted their plans and re-applied to the ZBA. The spiral staircase was originally outside of the building but they moved it inside on this plan. This will be the access to the second floor. The roofline is an A-frame now but they would like to flatten it so that they can get furniture up to the second floor. There is an existing bump out on the first floor now where utilities would be run upstairs. Carlson stated that she has discussed the utility pole with Consumers Energy. They do not want to move it unless it broke because it also accesses another parcel. They would like the mast moved to the front of the cottage and line installed underground from the pole in that area. They have advised her that even if the pole were to break they would likely only move it 8-10” from its current location. They looked at taking the power back to another pole but it still would have to go through trees and over a shed so that won’t work.

Strickland stated that she understands that the cottage is non-conforming but it has been this way since they purchased the property. They are looking for more room for their family as it is very tight now when they are here. They simply want to go up for more space, not out at all. They have had letters of support from the neighbors and she brought three more tonight from their closest neighbors.

Bates stated that he visited the site and is curious as how the building is being used. It is labeled as a garage on the plans. The letter of opposition from a neighbor says it’s used as an Air BnB. Carlson stated that it is mislabeled on the plans, it is a cottage not a garage. It has been used as an Air BnB. Bates stated that it is incredibly close to both the road and the water. This is not an unfamiliar situation but it is quite close in this case.

Lively asked what the extent of the remodel will be. Carlson stated that the windows and siding will be done, the current roof on the cottage would come off, they’d frame for the new level, insulation, and move electric. The main level will not be remodeled. Lively asked if the house is on public sewer. Strickland stated that it is. Lively asked if there are any footprint changes proposed. The applicant replied, no.
Drier stated that she is concerned about the pictures that were shown. It doesn’t seem complete to her. Will there be an open second floor? Carlson stated that it would be an open second floor for sleeping space only. Drier asked if there is kitchen facilities. Carlson responded, no.

Lively asked if there will be insulation or electric work done on the first floor. Carlson stated that some electrical may have to be moved to get up to the second floor but there will be no interior wall changes. There was a permit issued in 1997 to raise the house and replace the foundation. Strickland stated that the cottage gets winterized and drained in October and is opened up again in May.

Buday stated that we would be allowing an increase in the non-conformity by 100% if the second floor is put on. He understands the owner’s want to do this but we have to remember that the variance runs with the land not the owners. He doesn’t see where the practical difficulty is. The site and buildings are very non-conforming and there are very significant encroachments into the required setbacks. Carlson stated that there is a great cost impact to do any work to increase living space in the main house. Buday stated that we cannot look at cost. Practical difficulty does not speak to him in this case. It is one thing to allow an increase in non-conformity if you can hang your hat on practical difficulties but this request is so outside of the boundaries. Regardless of the reasons that this owner needs the space now any variances would be there for the next owner.

Alexander stated that he shares a lot of these same feelings. A request like this is an uphill battle. He stated that his hat is off to the owners for enhancing the lot. We are to try to control non-conformities not allow them to be increased.

Lively read from Section 23.03.1. He stated that there is no additional land outside of the existing building being used or expanded. Alexander stated that by adding a second story they are doubling the potential usage. Bates stated that sometimes with non-conforming buildings we are looking at them because trees fall on them and people want to rebuild. This case is about wanting more room.

Bates noted that page two of the zoning evaluation was missing in the packets. A complete copy was given to him.

Alexander went through the review items as laid out in the zoning evaluation.

Strickland asked who wrote the opposition letter. A copy was given to her and Bates read the letter aloud.

Buday asked if they would be able to meet setbacks if the cottage was moved. The building envelope was pointed out on the site plan and it would not be able to be moved to accommodate setback requirements.

Bates stated that the primary residence has a variance granted for both the road, water, and side.

Lively asked what the present pitch on the cottage is. Carlson stated that it seems to be 6:12. He asked if the roof was replaced and an attic truss was used if that would still require a variance. Buday stated that it still becomes habitable space and would still increase the non-conformity. Lively asked if we have a zero tolerance then for increasing the non-conforming uses. Buday stated that the intent of this section is to not increase and not encourage non-conformities. This request is very far out of conformance. Alexander stated that if this were a request for a primary residence it could be a different situation but there is a primary use on the property that is still being used and this request is an expansion of a non-conforming
use. Buday noted that the County ordinance is often less strict than some of the local city or townships’ ordinances that have their own zoning. Alexander stated that we are trying to protect the waterfront with the increased setback requirements. Buday stated that a dimensional variance is different than a use variance; they have not shown a practical difficulty.

There was no public comment in this case.

Strickland stated that this cottage is used as an Air BnB in the summer but is not used this way when her family comes up. It is not used when her brother in law comes up either. It was inherited with the stipulation that he is able to use the guest cottage but since there isn’t enough room, he hasn’t been able to bring his family with him. She stated that she gets the feeling from the opposition letter that they think that she wants more room for the purposes of the Air BnB but this is not the case and wouldn’t be a wise fiscal decision. They are not encroaching anymore towards the road or water and are not even going up as high as the maximum height. The trees are all staying and it keeps the taller building from looking like a monstrosity.

Alexander stated that the property looks fine but once a variance is there it carries on with the property.

Buday made a motion to deny PZBA19-012, DWS Builders of Michigan Inc for Johnson Trust Company for an expansion of a nonconforming use, a waterfront setback variance of up to 34 ft. and a front yard setback waiver of 40 feet to apply to an existing non-conforming cottage at 6151 Graham Road, Section 19, Springvale Township, tax parcel number 24-14-17-19-301-026 as shown on the site plan dated May 20, 2019, there is no practical difficulty demonstrated by the applicant and because the subject parcel is extremely out of conformity. The motion was supported by Drier and passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Buday. No: Lively. Absent: Malott.

3. CASE PZBA 19-013 Nicole Cornwell, Waterfront Setback Variance, 5444 Jones Landing Rd, Section 31, Bear Creek Township

Legal Notice: A request by Nicole Cornwell for a waterfront setback variance of up to 7.75 feet to apply to a porch at 5444 Jones Landing Rd in Section 31 of Bear Creek Township. The property is tax parcel 24-01-19-31-100-009 and is zoned R-2 General Residential. The request is to allow a covered porch within 52’4” of the Walloon Lake shoreline. Review will be per Section 22.11.1 and Article 25 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, email from James & Denise Jacob, site plan, elevations, zoning evaluation, letter from Haggard’s P&H, letter from Evan Lyall, letter from Patrick & Carol O’Keefe

Salar presented the location of this parcel which is on Jones Landing on the waterside. The parcel is zoned RR. The aerial was shown. There is currently a residence on the property with a porch on the lakeside. The proposal is to enclose a section of the porch which would encroach on the waterfront setback. Salar explained that there is construction at the site with permits. The portion of the porch that is to be enclosed would need a 7’8” waterfront variance. The township does not make recommendations on ZBA cases. Support letters have been received. Site plans, elevations, and photos of the site were shown. Salar explained that the current deck as is does encroach into the waterfront setback but it is low enough to be approved.

Nick Liebler was present for the applicant. He stated that they are currently doing construction on the
house to try to beat the weather. They had originally intended to put a bedroom on the waterfront side but decided to move it to the other side of the house to conform with setback standards. The house was purchased a year ago. The owners are looking to have a covered porch on the lakeside. He explained that the dashed line of the site plan is existing and they are only planning to enclose a section of the porch. It is currently one story open-air. The enclosed section will have no living area above it. The sun comes in very hot and low on the west and they are looking for a place that they can be protected from this and still enjoy their deck. He stated that from a practical difficulty standpoint he realizes that it is difficult. It is hard to argue since they have a home but the home is where it is and can’t be moved. There has been some work done on the south side of the house as well in order to clean up discrepancies dealing with well and LP tank locations. The previous owners had put them on the property without a survey. The new owners are working to remedy these encroachments.

Alexander noted that the ZBA location sign was not posted and therefore the site was difficult to find. Liebler stated that it was at the site but they have had to empty all of the contents for the remodel so it may have been lost. Alexander stated that the parcel is 2.5 acres and asking for more encroachment is hard. Is there any way of this porch being brought back or shrunk farther away from the waterfront? Liebler stated that the owners actually wanted more. He feels that the proposal is the minimum that they can do to both minimize the encroachment and still do them justice to give them what they want. Alexander asked about the dimensions of the porch. Liebler stated that at the largest point is 22’ in width and 16’ long.

Lively asked if there are steps down now. Liebler stated that there are steps but they are going to be landscaping as well so the grade may come up farther.

Buday stated that the plans show an area of deck to be removed. On the plans, both the deck and garage are called structures in both areas but one is a deck, one is a garage. The deck isn’t really a trade off as it is allowed as it is now. The landscaping isn’t finished so there may be more patios and such. The argument for practical difficulty has seemed to be that because everyone else has one, they should as well. He is concerned about the size; does it have to be that big? There is no floor plan to indicate the layout. Liebler stated that they want room for a dining table and seating. Buday stated that this is a want; there are many larger and many smaller decks along the lake.

Drier stated that they bought the house a year ago and must have liked what they saw. They’ve gone right into construction and wanting more though. It sounds like wants to her and not sure that we should grant a variance for this.

Lively stated that although the structure encroaching would be a porch, it would have a roof over it which means a high possibility of being enclosed and becoming more living space or an all season room someday. He is having some difficulty with this. He is not sure that it is needed. It looks great on paper but there has to be a place to put it.

Bates stated that he has no concerns with the proposal. He feels like the existing footprint is coming back and appreciates that it is not encroaching on neighbors. This is the first case in a while that has had unanimous support from neighbors and that carries weight with him.

Lively asked if the water levels are up on Walloon Lake. It was explained that it is regulated by the Bear
River spillway. Bates explained that the ordinary high water mark that is on the plan is what the waterfront setback is measured from so the lake levels wouldn't be looked at. Liebler stated that it does fluctuate a bit.

Drier asked the board if it would help anyone besides her to have a better diagram to review. She said that she understands what the request is but doesn't have a vision of it being enclosed. Buday stated that it would be helpful. Liebler asked if it could be a condition of approval. Alexander explained that the request for more information is to be able to make a determination. If it were denied, a year would have to pass before it could be requested again. Liebler stated that they are chasing weather and if this information wouldn't change the opinions he's not sure it would be helpful or worthwhile. Drier stated that she can make a decision if need be but wanted to give that option. She wasn't able to find the site so she wasn't able to see it. Bates asked Drier what she is looking for that hasn't been provided. There are elevations included in the packet. Drier stated that she is worried about the landscape extensions. Bates stated that if the concern is about what you might see it could become a condition of what you don't want to see. If the concern is regarding it becoming a four-seasoned conditioned space, this could be a condition in a motion. Liebler stated that it could be labeled as uninhabited space. Alexander stated that this has been discussed many times before. If there is a roof over a porch it makes it very hard to enforce if after the fact someone decides to enclose it. Buday asked about the dimension from the face of the building to the gable end of the porch. Liebler replied 16'4"; 18'4" with overhang.

Liebler noted that although it is a good sized property, the majority of it is wetlands.

Buday went through the review points for this case. He stated that he doesn't think that the issue is self-created as they bought a conforming house, they can still use the property, he is unsure on whether the request is the minimum variance necessary, and he doesn't think that the variance would have any adverse impacts on neighbors. He stated that he is hung up on point two as there is a permitted use on the property.

Bates stated that he does agree with all of those points but he feels also that there have been several cases that may or may not check all of these boxes that we've reviewed. He stated that he is very good about not taking finances into consideration. This is the first case in a while that there have been no neighbor objections. The 7' doesn't bother him since the current deck is bigger than that. Bates stated that he is glad that there are multiple people on this board to make the decision. If it were a straightforward request it wouldn't be here.

Alexander stated that it is a large piece of property. They obviously are not going to move the house.

Bates stated that he feels that if the house were smaller and on a cheaper lake it would be looked at differently. This is a massive property on an expensive lake that owners are dumping money into. He stated that he feels that this isn't emotionally appealing. He thinks it would be approved somewhere else. He is trying to keep finances out of his decisions both positive and negative.

Liebler stated he feels that this is the minimum variance request option as they were hoping for a larger porch. They came in with the minimum that they needed without being greedy.

Drier made a motion to deny PZBA19-013, Nicole Cornwell for a waterfront setback variance of up to 7.75
ft. to apply to a porch at 5444 Jones Landing Rd. in Section 31, Bear Creek Township, tax parcel number 24-01-19-31-100-009 as shown on the site plan dated Received August 26, 2019, because there is no practical difficulty and there are options without a variance. The motion was supported by Buday and passed on the following roll-call vote: Yes: Drier, Alexander, Buday, Lively. No: Bates. Absent: Malott.

IV. Public Comments: None.

V. Other Business:
   - There was continued discussion from last month regarding a checklist for township review. Also suggested was some sort of information to be handed out to the applicants regarding what the items to be reviewed will be. Perhaps a worksheet to be turned in by the applicant similar to the impact statement that is turned in for Planning Commission cases that would require them to respond to the review criteria with their application package.
   - Enforcement Report: Distributed, some discussion

VI. Adjournment:
    Alexander called the meeting adjourned at 7:51 PM.

Minutes Certification:

__________________________________________________________________________
Mark Buday, Secretary  Date
REQUEST

PZBA19-014
A request by Wayne Shotwell for Belle Tire for a variance to the height of a flag pole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP. The request is to allow a 60' high flag pole where 30' maximum is permitted. The review will be per Section 22.07 and Articles 19 & 25 of the Zoning Ordinance.

LOCATION
Plan prepared by
Emmet County Planning and Zoning
231-348-1735

1 in = 500 feet
Date: 10/16/2019
**APPLICATION TO EMMET COUNTY ZONING BOARD OF APPEALS**

EMMET COUNTY OFFICE OF PLANNING, ZONING, AND CONSTRUCTION RESOURCES

3434 HARBOR-PETOSKEY RD, SUITE E, HARBOR SPRINGS, MI 49740

PHONE: (231) 348-1735  FAX: (231) 439-8933

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**DATE RECEIVED**: 2019-09-02  
**APPLICATION #**: PZBA K9-014  
**DATE PAID**: 2019-09-02

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**Applicant’s Name**: Wayne Shotwell  
**Phone**: 313.271.9400

**Applicant’s Address**: 1000 Enterprise Drive, Allen Park, MI 48101

**Applicant’s Email Address**: wshotwell@belletire.com

**Owner’s Name**: Belle Tire / Barnes Development  
**Phone**: 313.271.9400

**Owner’s Address**: 1000 Enterprise Drive, Allen Park, MI 48101

**Owner’s Email Address**: wshotwell@belletire.com (Represents Owner)

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**JOB SITE LOCATION:**

<table>
<thead>
<tr>
<th>Township: Bear Creek</th>
<th>Tax Parcel #: 24-01-19-18-00-055</th>
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<tbody>
<tr>
<td>Address: 2150 Anderson Rd</td>
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**ZONING REQUEST:**

- **Dimensional Variance**: X
- **Expand Nonconforming Use**: □
- **Interpretation**: □
- **Sign Variance**: □
- **Administrative Appeal**: □
- **Temporary Use Permit**: □
- **Other**: □

**Describe Request:**

Proposing 60' high flag pole with 30' X 20' American Flag

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**REQUIRED INFORMATION** *(FLAG POLE SETBACK)*

- **Front Yard Setback requested**: 69.7 ft.
- **Side Yard Setback requested**: 25.1 ft.  
  173.9 ft.
- **Rear Yard Setback requested**: 249.2 ft.
- **Waterfront Setback requested**: DNA ft.

**Site/Plot Plan required:**

9 copies of each document submitted are required.  
**PLOT PLAN MUST BE DRAWN TO SCALE.**

**Elevation Drawing**: X  
**Complete Site Plan**: X  
**Date Submitted or N/A**: Sept. 24, 2019

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**Other:**

As owner/and or applicant representing the owner, I do X do not □ authorize Emmet County (staff, appointed board, and/or commissioners, or committee members) to enter upon the subject property for purposes of making inspections related to the project or request identified in this application. If authorized, such inspections or site-walks shall be conducted at reasonable hours and times.

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**I certify that all the above information is accurate to my fullest knowledge:**

**Wayne Shotwell**  
**Printed Name of Applicant**: Sept. 24, 2019  
**Signature of Applicant**: Donald H. Barnes  
**Printed Name of Property Owner**: Sept. 24, 2019  
**Date**:  

*Required* Signature of Property Owner

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A complete plot plan drawn to scale is required to show: property dimensions; front, rear, and side yard setbacks; streets, roads, and all existing and proposed structures on the lot and other site inventory such as, but not limited to well & septic location, driveway location, etc. A property survey may be required if deemed necessary for proper review.

Review Article 25 of the Zoning Ordinance for review standard.
County of Emmet  
Department of Planning, Zoning & Construction Resources  
3434 Harbor Petoskey Road, Suite E  
Harbor Springs, Michigan 49740  
Phone: 231-348-1735 Fax: 231-439-8933  
www.emmetcounty.org

Date: 10/11/19

Emmet County  
Planning, Zoning, & Construction Resources  
3434 Harbor Petoskey Road, Suite E  
Harbor Springs, MI 49740

To Whom It May Concern:

We hereby authorize (applicant’s name) Wayne Shotwell/Belle Tire Distributors, Inc. to apply for and sign (as agent) the necessary Emmet County permit applications for (project) Flag pole construction/installation of flag. Any questions should be directed to (business name) National Retail Properties, LP, 450 S. Orange Ave Suite 900 Orlando, FL 32801  
[Signature]

Sincerely,

[Signature] Kevin B. Habicht  
Title: Executive Vice President

Property Owner Signature (please print name below)  
Belle Tire  
313-203-2195  
wshotwell@belle-tire.com
10/10/2019

Dear,

Zoning Board of Appeals,

Belle Tire started using a 60-foot flag pole and a 20 by 30 foot American Flag in the 1980's. Our 40-year flag tradition is a staple at all of our 117 stores in Michigan, Ohio and Indiana. The tradition started as Belle Tire's way of sharing our pride in our nation and gratitude to those who have served our country. We proudly follow and are extremely diligent in following all local, state and Federal decrees to lower our flag to honor fallen heroes.

Wayne A. Shotwell
Chief Operating Officer

Belle Tire Distributors, Inc.
1000 Enterprise Dr. | Allen Park, MI 48101
office: 313.203.2195 | cell: 248-444-9539
bellefire.com | facebook | twitter | youtube

BELLE TIRE | Better at Every Turn

RECEIVED
OCT 10 2019
EMMET COUNTY
PLANNING & ZONING
Sears Michael  re: 13-18-13-200-004 is supportive of a 60' high flag pole.

Sincerely, Mike Sears
Record of Phone Call

Linda Leech
2226 Cemetery Rd

RE: PZBA19-014

Enjoys seeing the flag at Belle Tire. They are not opposed. They support the flag and are not opposed to the height.

Tammy Doernenburg
10/22/2109
8:38 AM
**Emmet County**  
**Planning, Zoning & Ordinance Enforcement Department**  
3434 Harbor Petoskey Rd., Suite E  
Harbor Springs, MI 49740  
PHONE: 231.348.1735  
FAX: 231.439.8933

---

<table>
<thead>
<tr>
<th><strong>Zoning</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>PZ 2018-0218</td>
</tr>
<tr>
<td>Issued: 01/23/2019</td>
</tr>
<tr>
<td>Expires: 01/22/2021</td>
</tr>
</tbody>
</table>

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### OWNER

| BARNES DEVELOPMENT CO |  
| 1000 ENTERPRISE DRIVE |  
| ALLEN PARK MI 48101 |  
| **Ph.:** |  
| **Fx.:** |  

### JOB SITE LOCATION

| 2150 ANDERSON RD |  
| **Address:** |  
| 01-19-18-100-058 |  
| **Property Tax ID Number:** |  
| BEAR CREEK |  
| **Township:** |  

---

### APPLICANT

| Enright Architects PLLC |  
| PO Box 7285 |  
| Bloomfield Hills MI 48302 |  
| **Ph.:** (248) 258 6485 |  
| **Fx.:** (877) 709 9787 |  

---

### ZONING REVIEW

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Consent Judgment</th>
<th>Use: commercial vehicle service/retail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Width: 62</td>
<td>Building Length: 164</td>
<td></td>
</tr>
<tr>
<td>Building Stories 1</td>
<td>Minimum Setback Requirements:</td>
<td></td>
</tr>
<tr>
<td>Building Height: 24</td>
<td>Front: 50 Rear: 50 Left: 100 Right: 50</td>
<td></td>
</tr>
</tbody>
</table>

**Work Description:** Construct a new retail and vehicle service building.  
Setbacks from Consent Judgment boundary.  
Front Setback: 600' (east - Anderson Rd)  
Side Setback: 700' (north)  
Side Setback: 560' (south)  
Rear Setback: 220' (west - Cemetery Rd)  
Building size: 164'x62'  
Building height: 24'  
Lot size: ~189'x320' lot within Consent Judgment boundaries.

### Stipulations

Site is submit to Consent Judgment dated Sept 7, 2004. Zoning approved based on  
Site Plan packet dated 10/25/2018, Landscape Plan dated Received Jan 03 2019, and  
Photometric Plan dated October 30, 2018 (received Jan 03 2019). All exterior  
lighting to be full cut-off and must comply with the Outdoor Lighting Section 22.06  
of the Emmet County Zoning Ordinance. No review of a flag pole was included with  
the application. A flag pole and flag lighting must comply with the Zoning  
Ordinance.

**Authorized Signature:** [Signature]

---

**Fee Total:** $200.00  
**Amount Paid:** $200.00  
**Balance Due:** $0.00
SUPPLEMENTAL/SUPERSEDING
PLANNED UNIT DEVELOPMENT AGREEMENT
BEAR CREEK PLAZA PHASE I, PHASE II, PHASE III

PARTIES OF INTEREST

This Planned Unit Development (PUD) Agreement is an agreement between the following parties of interest, relative to a proposed development and expansion of the retail shopping center project identified by Emmet County Zoning Case #124H-94 affecting Tax Parcels numbered 24-01-19-07-300-020, 029, 037, 038, 039, 040, 041, 042, 047, 048, 049, 380-101 and 380-102. This Agreement is an amendment to, and a replacement of, a previous Three Party Planned Unit Development Agreement between the developer, RG Properties, Inc., Bear Creek Township, and Emmet County, previously known as Emmet County Zoning Case #124-94 and Supplemental Planned Unit Development Agreement, Bear Creek Township Case #P-00-01. This Agreement supersedes and replaces in their entirety the prior agreements, the approved PUD Master Plan, and the prior Supplemental Planned Unit Development Agreement. The parties of interest are:

<table>
<thead>
<tr>
<th>Party No. 1</th>
<th>The Developer or Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>RLG Bear Creek LLC and GCG Bear Creek LLC</td>
<td></td>
</tr>
<tr>
<td>c/o RG Properties, Inc.</td>
<td></td>
</tr>
<tr>
<td>8163 Old Yankee Road, Suite B</td>
<td></td>
</tr>
<tr>
<td>Dayton, OH 45458</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Party No. 2</th>
<th>The County</th>
</tr>
</thead>
<tbody>
<tr>
<td>The County of Emmet</td>
<td></td>
</tr>
<tr>
<td>County Building</td>
<td></td>
</tr>
<tr>
<td>200 Division Street</td>
<td></td>
</tr>
<tr>
<td>Petoskey, MI 49770</td>
<td></td>
</tr>
</tbody>
</table>

It is understood the owner/developer may assign any and all rights or interests to a party or parties other than Party No.1, but such assignments shall carry the terms of this PUD Agreement (or supplements which may be made to this agreement) as binding and running with the land. Owner/developer shall notify Emmet County of any such assignment.

PURPOSES

The purpose of this Agreement is to obtain good faith performance and ensure that the shopping center project, as approved pursuant to the PUD Mixed-Use Master Plan (Preliminary & Final, as amended), and subsequent Site Plan(s), are constructed and maintained in accordance with all of the approval motions and conditions of Emmet County. The original approval motions made by Emmet County for the Final PUD Master Plan identified a Primary Parcel, being tax parcel no. 24-01-19-07-300-001 and a Secondary Parcel, being tax parcel no. 24-01-19-07-300-016, with development phases. The amendment to the Final PUD Master Plan includes new Tax Parcel Numbers in the Primary Parcel as being 24-01-19-07-300-029, 037, 038, 039, 040, and 041 and the Secondary Parcel as being Tax Parcel Numbers 24-01-19-07-300-020, 042, 047, 048, 049, 380-101 and 380-102. All the parcels shall be considered one Zoning Lot for the purposes of this agreement and as of this date, the secondary parcel is approved under the preliminary PUD Master Plan procedures and is restricted as provided for in this Agreement.
BACKGROUND
The developer, Party No. 1, received approval for a Final Mixed-Use Planned Unit Development-1 (PUD-1) by the Emmet County Board of Commissioners on October 12, 1995. A PUD Agreement titled “Three Party Planned Unit Development Agreement” was established and has remained in place since 1995.

On January 10, 2000, the Bear Creek Township Interim Zoning Ordinance became effective. During the Interim Zoning Administration, Bear Creek Township approved a PUD-1 amendment and a PUD agreement titled “Supplemental Planned Unit Development Agreement – Bear Creek Plaza” was established and remained in place until the Interim Zoning Ordinance expired on January 10, 2003.

This Agreement is created to combine the standards created by Emmet County in 1995 with those established by Bear Creek Township in 2000. The Emmet County Planning Commission approved this Agreement on December 6, 2007. The Emmet County Board of Commissioners approved this Agreement on February 7, 2008. Upon execution of this Agreement by both Party No. 1 and Party No. 2, this Agreement shall thereafter be the sole controlling document with respect to the development and expansion of the retail shopping center project on the subject land.

CONDITIONS
The following conditions and requirements shall run with the land, and as such are obligations upon the current owner(s) or such other persons and/or entities who remain or who subsequently become owners of any part or all of the subject land encompassed in the Preliminary and Final PUD Mixed Use Master Plans.

1. The Final PUD Master Plan dated 8/26/96 and originally approved by the Emmet County Planning Commission on 10/3/96 and the amended Master Plan dated 2/11/00 and originally approved by the Bear Creek Township Planning Commission on 3/1/00, as approved per Article XVIII and Section 2405 of the Emmet County Zoning Ordinance, are incorporated herein, with all notations and graphic illustrations contained thereon. The Final PUD Master Plan dated 12/10/07 (a copy of which is attached hereto as Exhibit A) is the currently approved Master Plan.

2. Any future expansion of the Phase III building on the primary parcel shall contain similar design elements as the existing buildings and shall incorporate a façade that will break up the long front wall of the building. The use of sidewalk landscaping may be incorporated into the plans to help break up the façade. The building façade shall be built in accordance with the approved elevation drawings presented at the 12/1/05 Emmet County Planning Commission meeting and which are on record as being part of the site plan approved. Minor modifications may be submitted to the Emmet County Planning Department. Any material modification will be subject to subsequent Planning Commission approval.

3. In addition to the Landscape Plans approved by the Emmet County Planning Commission, the following shall be required to be shown on landscape plans at the time of submission of applications for Zoning Permits and installed in accordance with the following provisions:

   A. The plantings and other landscape features detailed on the approved drawings from the 12/1/05 Emmet County Planning Commission meeting and which are on record
as being part of the site plan approved, must be installed as shown on the plans within three (3) months of the completion of any building, but prior to the occupancy of any building, and in no event later than one (1) year after the building permit is issued.

B. Any portion of the site disturbed by grading and on which no construction occurs during any six month period shall be planted with appropriate ground cover and properly maintained as approved by the Soil Erosion Control Officer.

C. Where Site Plans have not been approved, final landscape plans shall not be required until the time the Site Plans are reviewed by the Emmet County Planning Commission. These final landscape plans should represent the overall concept plan for the development and fit in naturally with the other approved plans within the development.

D. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes, as originally planted, within 6 months, weather permitting.

E. An irrevocable letter of credit or other performance guarantee approved by the County in an amount as reasonably determined by the County through the use of an independent, certified engineer or landscape architect, to ensure completion of the screening and landscaping contemplated by this Agreement, must be submitted prior to the release of any building permits in order to ensure the installation of the required landscaping in accordance with the approved landscape plan. The amount of the performance guarantee shall be equal to or greater than the estimate of the cost of material and the installation of landscaping and shall remain in effect until such time as the landscaping has been completed, as determined by the Emmet County Zoning Administrator. Upon determination by the County that the landscaping has been completed, the owner or developer may request release of the surety instrument provided. Normal and approved parking lot landscaping for Phase III shall not require a bond.

F. Landscaping shall conform to, but may be more than, the landscaping shown on the approved PUD plan, and will be reviewed for approval at the time of Site Plan Review.

All signs for walls and the freestanding signs for businesses in the Secondary Parcel shall be in accordance with the Emmet County Zoning Ordinance standards and be approved by the Emmet County Sign & Lighting Committee.

A freestanding sign, to be jointly used, as approved by Emmet County Case #124D-94 is permitted for the Primary Parcel, to be located on the Secondary Parcel as shown on the PUD Master Plan. No other billboards or off-premises signs shall be erected in the PUD project on either the Primary or Secondary Parcels. A freestanding sign, as approved on 9/7/06 by Emmet County Case #124G-94 is permitted for 1364 Plaza Drive, tax parcel 24-01-19-07-300-047 located in the Secondary Parcel.
Freestanding light standards in the shopping center parking lot, and in the outlot areas, shall not exceed thirty (30) feet in height. Perimeter lighting standards shall not exceed a height of twenty (20) feet. All outdoor lights shall have a full cut-off design with horizontally aligned flush mounted lens, designed and/or directed away from all adjacent properties and uses and further shall not glare upon or interfere with persons and vehicles using public streets. All proposed outdoor lighting shall be approved by the Emmet County Sign & Lighting Committee.

6. All on-site electrical and communication conduits shall be placed in-ground rather than overhead, including existing local power lines on Anderson Road which borders or runs along or exists on any portions of the PUD project site.

7. At the time of application for a Zoning Permit, letters or statements must be submitted from the utility providers that the project can and will be supplied, by utilities including, but not limited to, municipal water and sewer. Approval of the buildings by the local fire protection agency having jurisdiction must also be demonstrated at that time.

8. The height of all buildings shall be permitted to be the higher of: A.) thirty (30) feet as regulated in the Zoning Ordinance or B.) as depicted on the approved building elevation sketches submitted with the Final PUD Master Plan or subsequent approved site plans.

9. Barrier type concrete curbing shall be installed along all on-site entrance roads to the project. In addition, all parking areas shall have concrete curbing installed around the perimeter as well as concrete curbing around all landscaped islands including those islands at the end of all parking bays, except in those areas approved for snow storage. These parking bay islands shall be landscaped as indicated on the approved landscaping plan.

10. Debris and trash shall be routinely collected on a weekly basis by the owner from the parking lot and grounds of all areas of the project including the infiltration basins. The County reserves the right to require more frequent collection as necessary. Space for a recycling drop-off type convenience center will be provided to serve shoppers. Debris/trash containment fencing shall be installed along the southerly property line where parking lots, loading areas, and/or service bay access roads are located. Ongoing maintenance of the infiltration basins and detention ponds shall be the obligation and responsibility of the owner of the shopping center property. Sediment shall be removed from the infiltration and detention basins and properly disposed of periodically during construction as reasonably required by the County in accordance with sound engineering practices. Thereafter, the maintenance obligation of the owner shall include similar sediment removal, as may be similarly required, and the owner shall keep the basins and all on-site drainage areas and facilities in good operating condition.

11. No direct motor vehicle driveway access from the project site onto Cemetery Road shall be permitted except as shown on the Final PUD Master Plan dated 12/10/07 (Exhibit A). Access from Cemetery Road will be the primary access for the future R2-B use area as depicted on the PUD Master Plan. The owner of the development shall secure an easement that allows for access between the theater lot and Anderson Road through the depicted future
R-2B use area. Such access shall not provide straight or unimpeded access from the theater lot to Cemetery Road, but shall provide for emergency access. The intent of this provision is to provide emergency access between the theater lot (and subsequently the rest of the commercial development) and Cemetery Road, but not to have such access as a main entrance/exit of the commercial uses along Anderson Road.

12. All public road improvements required for County Roads including but not limited to all costs associated with preliminary and final engineering, preparation and completion of construction plans and bid documents, and including signage, pavement markings, and traffic signal and coordination thereof required as a result of this development shall be the responsibility of the owner. Any new requirements by the Emmet County Road Commission for road improvements shall be completed in accordance with the standard practices of the Road Commission, including turn lanes on Anderson Road immediately in front of the property. No additional off-site improvements will be required. As of the date of this Agreement, this requirement has been completed satisfactorily.

13. All costs for any improvements (including but not limited to all costs associated with preliminary and final engineering, preparation and completion of construction plans and bid documents) to be constructed within the right-of-way area of US-131 as approved by the State of Michigan shall be the obligation of the owner. Provided, however, such costs may be shared by the Northern Michigan Hospitals Subsidiary, Healthshares, Inc. and the Little Traverse Bay Bands of Odawa Indians to be based upon their relative impact on US-131. As of the date of this Agreement, this requirement has been completed satisfactorily.

14. No occupancy permit from Bear Creek Township Building Official is to be issued for any structure within the Bear Creek Plaza project area until the required improvements within the right-of-way of US-131, Anderson Road and Lears Road are substantially completed, operational or properly secured as determined by the Emmet County Road Engineer and the Michigan Department of Transportation (MDOT) as applicable. As of the date of Supplemental Agreement Volume 2, this requirement has been completed satisfactorily.

15. Once the project is started, the Final PUD Master Plan as amended and attached hereto as Exhibit A shall remain in effect for all areas of the plan shown on the Primary and Secondary Parcel.

16. The Secondary Parcel bounded to the east by US-131, the west by Anderson Road and to the south by Lears Road, shall be restricted to R-2B uses as presently documented in the Emmet County Zoning Ordinance, provided, however, that up to three (3) sit down type restaurants shall be permitted for that area and per site plan review of each building.

17. The area shown on the approved Final PUD Master Plan as “Cinema” allows for theater uses as well as all permitted and special uses allowed in the R-2B district of the Emmet County Zoning Ordinance.

18. The following greenbelt setbacks shall be applied to the development:

A. East property line along US-131 - 100' wide
B. North property line of the entire development - 100' wide
C. South property line between Anderson & Cemetery Roads - 30' wide
D. West property line along Cemetery Road - 100' wide
E. East and west sides of Anderson Road - 50' wide

19. All building fronts or faces in the Shopping Center area shall have custom veneer brick fronts (east elevation) and shall be in substantial compliance with color rendered elevations dated 8/8/95 for the Wal-Mart Store and dated 8/11/95 for the balance of phase one of the shopping center and displayed at Public Hearings leading to Final PUD Master Plan approval and made a part of this Agreement by reference. Open-end walls shall be treated to have a finished appearance, i.e., at least painted to match the facade. The standard or typical gray color tone for Wal-Mart stores shall not be used in the proposed shopping center complex, on either the Primary or Secondary Parcels.

All building facades shall be built in compliance with the approved site plan and to the specifications shown for each individual elevation and façade drawings presented for those approvals. The Phase III elevations were stamped as part of site plan approval on 12/1/05 with the condition that the total east face is bricked to match the rest of the proposed east façade and the rest of the building is painted to match the façade.

20. All buildings in the “Shopping Center Area” shall be permitted to increase or decrease in depth limited by the expansion lines shown on the approved PUD Site Plan. Plans that deviate from these expansion criteria will be considered revised site plans and will require approval by Emmet County Planning Commission.

21. Parking for the development shall be provided so that there is a minimum of 4.0 cars and a maximum of 5.0 cars per one thousand square feet of gross leaseable area. Certain stalls may be deferred if shown on the approved Site Plan for the individual buildings or lots. If it is shown by the applicant or County, over a period of time, that the deferred spaces are needed, the Zoning Administrator may require the increase in parking area. The applicant may install the deferred spaces, but only after applicant has applied for a Zoning Permit and such zoning permit has been issued by the Zoning Administrator; provided, however, the entire Phase III parking lot can be constructed at the time any portion of the Phase III buildings are constructed.

22. Right-of-ways and/or easements for non-motorized trails (as bikeways) shall be permitted on the Developer’s or Owner’s property and generally parallel public roads, or on separate adjacent parcels, in specific locations that are mutually agreeable to Emmet County and the Developer and may be permitted in the setback.

23. Outdoor sales activity including tents, awnings, trailers and the like shall be regulated as follows:
   A. Permitted in fenced areas of the garden and sales centers, as shown on the approved site plan.
   B. Retail plant materials may be displayed on the sidewalk at the garden centers provided safe and adequate pedestrian walking space remains.
   C. No other outdoor sales or display of merchandise and no outdoor vending machine
sales or display.

D. No outdoor display or sales by itinerant merchandisers, such as but not limited to furniture items, art works, fire works, pottery crafts, etc.

E. Rental vehicles of the businesses on site may not be parked in the front of any building, but may be parked behind the buildings.

24. Overnight camping and overnight parking is prohibited anywhere on site unless approved for a local event by the Zoning Administrator, provided however, trucks/rental vehicles may park behind the buildings overnight as necessary.

25. The PUD Project may be constructed in phases or stages, and it is understood by this Agreement, that the parking, landscaping, and lighting elements of the plan may be constructed in proportion to the approved phase as defined on the Zoning and/or Occupancy Permit other than as detailed in paragraph 21 above.

The Final PUD Master Plan (Exhibit A) as approved shall take immediate effect upon the execution of this PUD Agreement, to assure that all approval stipulations are, in fact, implemented and including the proper maintenance of all required and Owner provided landscaped areas, and all storm drainage systems.

This Agreement supersedes and replaces in their entirety the prior agreements, approved PUD Master Plans, and the Supplemental Planned Unit Development Agreement. This Agreement shall hereafter control the development and expansion of the retail shopping center project on the subject land.

The undersigned representative(s) of the Developer or Owner certifies that he or she is duly authorized to sign this agreement on its behalf.

DEVELOPER OR OWNER:

RLG BEAR CREEK LLC

[Signature]

Randall L. Gunlock, Managing Member

Witness

4/1/08

Date

GCC BEAR CREEK LLC

[Signature]

Glenn C. Gunlock, Managing Member

Witness

4/1/08

Date

EMMET COUNTY:

[Signature]

John Boy, Chair

Emmet County Planning Commission

Witness

4/1/08

Date
EXHIBIT A
FINAL PUD MASTER PLAN (AS AMENDED)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETOSKEY INVESTMENT GROUP, L.L.C.,
a Michigan limited liability company,

Plaintiff,

vs

COUNTY OF EMMET,

Defendant.

Timothy A. Stoepker (P31297)
Dickinson Wright PLLC
Attorneys for Plaintiff
500 Woodward Avenue, Ste. 4000
Detroit, MI 48226
313-223-3500

Kevin T. McGraw (P41206)
McGraw & Eckhardt, P.C.
Attorneys for Plaintiff
314 M.A.C. Avenue, Ste. 100
East Lansing, MI 48823
517-664-4127

Todd W. Millar (P48819)
Craig R. Noland (P30717)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defendant
202 East State Street
P.O. Box 848
Traverse City, MI 49685-0848
231-929-4878

CONSENT JUDGMENT

At a session of said Court, held in the Federal District Court, Western District of Michigan, City of Lansing, State of Michigan, this 14th day of September, 2004.

PRESENT: Federal District Judge David W. McKeague
The parties herein hereby stipulate and agree to the following findings:

1. That the parties have participated in a Court ordered settlement conference.

2. That the Defendant has the authority to enter into this Consent Judgment and that use of the Property pursuant to the terms herein is a reasonable and lawful use consistent with public health, safety and welfare. Defendant, after participating in extensive negotiations, and after reviewing the Consent Judgment with counsel, has duly approved the same in accordance with applicable law and has agreed to be bound by the Consent Judgment. The terms of this Consent Judgment shall run with the land and be binding upon the successors and assigns of the parties to this litigation, including, but not limited to, any successor governmental body or entity. This Consent Judgment is not an ordinance amendment of the County Zoning Ordinance, and under no circumstances shall it be deemed to be such an ordinance or amendment. As this is not a rezoning, or other legislative act, but a Judgment entered by this Court, this Consent Judgment is not subject to referendum.

3. That the Plaintiff, after participating in extensive negotiations and reviewing the Consent Judgment with counsel, has approved the same as provided by applicable law and has agreed to be bound by the terms of the Consent Judgment.

4. That the settlement reflected in this Consent Judgment has been consented to by the parties freely, voluntarily, and with full knowledge of its
effects, finds that its terms are fair, just, reasonable and in the public interest under all the circumstances and it has been entered into in good faith by the parties.

5. That based on the general location of the property; the proximity of intense commercial uses; the current zoning classifications of the subject property; the proposed uses by Plaintiff; and unique circumstances of the subject parcels, due in part to the siting nearby of a casino by the Little Traverse Bay Bands of Odawa Indians, the parties agree that Plaintiff's proposed uses are reasonable, and consistent with the public health, safety and general welfare.

Pursuant to the above facts, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. This Consent Judgment involves the parcels of land located in Bear Creek Township, Emmet County, totaling approximately 90.18 acres, which parcels are more particularly described in the attached Exhibit A, which is incorporated herein, hereinafter referred to as the “Property”.

2. Notwithstanding the current zoning districts on the Property, and subject to the conditions and terms of this Consent Judgment, Defendant Emmet County (the “County”), and its agents, employees, representatives, commissioners, trustees and officials, shall be deemed to have given their approval of the use, development and operation of the Property with retail/commercial and multi-family residential uses as hereinafter described and shall be enjoined from interfering with such uses.
3. The development authorized by this Consent Judgment shall be:

A. The residential portion which is identified as Parcel 1 on Exhibit A, shall contain a maximum of 240 residential units, including apartments, and is deemed approved by the County consistent with the R-2C zoning classification of the County Zoning Ordinance as it exists as of the date of this Judgment. Residential units, infrastructure, and/or amenities supporting the residential units will be placed on the 11-acre parcel located in the northeast quadrant of Intertown Road and Anderson Road.

B. The commercial portion of the Property, which is identified as Parcel 2 on Exhibit A, is deemed approved by the County for all uses consistent with the B-2 zoning classification of the County Zoning Ordinance as it exists as of the date of this Judgment. Plaintiff shall be entitled to construct up to a maximum of 300,000 square feet of commercial space on Parcel 2 as measured from exterior wall to exterior wall, excluding eaves, loading docks, and awnings. Any garden/outdoor center or similar use shall be included in the measurement of square footage. The demarcation line on Exhibit A separating residential and commercial uses may be adjusted by mutual agreement, depending on site conditions. However, this line shall not move any further to the south.
C. The approved uses shall not be treated or considered as nonconforming uses and/or structures.

4. Plaintiff shall file applications for Final Site Plan approvals, as provided by Section 2405 of the County's zoning ordinance, with the exception of any "Impact Statement", which is not required. Final site plan review and approval shall be conducted by the County Zoning Administrator and/or the County's designee without a review by the County's Planning Commission or Board of Commissioners. The Zoning Administrator and/or the County's designee shall be authorized to make modifications to the site plans reasonably consistent with the intent of this Consent Judgment without further action by the County's Planning Commission, the County Board, or this Court. The Zoning Administrator and/or the County's designee shall approve, conditionally approve, or reject the final site plans, with specific reasons, within a reasonable time after receiving a substantially complete application. It is the intent of the parties to provide for an expedited approval process and avoid multiple submissions to facilitate the immediate commencement of construction. If the proposed plan is reasonably consistent with the terms of this Consent Judgment, the Zoning Administrator and/or the County's designee shall approve same without conditions or delay. The parties understand that final engineering has not been completed for the proposed uses on the Property and that reasonable modifications to the preliminary site plans shall be granted in order to accomplish the intent of this Consent Judgment.
5. Attached hereto as Exhibit B are Site Development Standards which are incorporated herein by reference, and shall govern the development of the Property. If the County Zoning Ordinance contains different standards, the terms of this Consent Judgment apply.

6. Any special use permits, fees, and/or variances required for the development of the Property, including for a gasoline station and drive thru restaurants, banks, dry cleaners, pharmacy, etc., are hereby waived and shall not be required. Based on the location of the Property and the surrounding uses, the following uses are prohibited: Adult Bookstore and Novelty Business; Adult Cabaret; Adult Personal Service Establishment; and Adult Motion Picture Theater. In addition, any and all Improvement Guarantees or bonds for site improvements are waived.

7. Plaintiff shall pay the lawful costs associated with the requirements of the Michigan Department of Transportation and/or Emmet County Road Commission as it pertains to the development of the Property, or any portion thereof, pursuant to this Consent Judgment.

8. Plaintiff shall have the option of obtaining water and sanitary sewer from either the Springvale-Bear Creek Sewage Disposal Authority and/or the City of Petoskey, or other sources, including but not limited to, constructing its own systems and/or in cooperation with the Little Traverse Bay Band of Odawa Indians.

9. The County, and its agents, employees, representatives, commissioners, trustees and officials, shall cooperate with Plaintiffs' efforts to
obtain any necessary approvals from other governmental or regulatory entities in its efforts to develop its Property; and if any governmental or regulatory entity with jurisdiction over Plaintiffs' proposed development requires modification of Plaintiffs' development plan before issuance of any approvals, permits or licenses, the County agrees not to unreasonably withhold, delay, or condition approval of said modification.

10. To the extent this Consent Judgment conflicts with any County ordinance, codes, rules, regulations and/or requirements, the terms of this Consent Judgment shall control. To the extent that the Consent Judgment is silent on the issues regulated by County ordinance, codes, rules, regulations and/or other requirements, then the County provisions will control, except to the extent they undermine or frustrate the intent of this Consent Judgment. A County ordinance, code, rule or regulation will be considered to be in conflict with this Consent Judgment if the enforcement of the ordinance or regulation would interfere with and/or prevent the development of any portion or all of the Property as set forth herein.

11. All the provisions of this Consent Judgment shall be binding upon, and inure to the benefit of Plaintiff and Defendant, and their respective heirs, successors, assigns, commissions, affiliates and transferees, and reference in this Consent Judgment to Plaintiff and/or the County shall also mean and refer to Plaintiffs' and County's successors and/or assigns. It is the intent of the parties to control the development of the Property with this Consent Judgment, regardless of any other prior legal judgment, including the March 26, 2002
Consent Judgment entered in Emmet County Circuit Court. Plaintiff shall not be prohibited from seeking redress in any other proceeding against other parties.

12. Plaintiff may assign its rights and obligations under this Consent Judgment.

13. This Consent Judgment, or an affidavit making reference to this Consent Judgment, may be filed by either party with the Register of Deeds for the County of Emmet.

14. Subject to the terms and provisions of this Consent Judgment, all of the claims and causes of action which were alleged or could have been alleged by Plaintiff in the Complaint in this case shall be and they are, hereby dismissed with prejudice and without costs or attorney fees to any party.

15. This Court shall retain jurisdiction to adjudicate any and all disputes between the parties arising from and relating to the interpretation and application of this Consent Judgment and to enforce and ensure compliance with the terms of this Consent Judgment.

16. This Consent Judgment may not be modified except by the written mutual consent of the parties.

Dated: September 7, 2004

/s/ David W. McKeague
Hon. David W. McKeague
Federal District Court Judge
STIPULATED AND AGREED TO:

Dated: September 2, 2004

Scott A. Chappelle, President
Terra Management Co., Manager

Dated: September 2, 2004

Petoskey Investment Group, LLC

By: ___________________________
   Scott A. Chappelle, President
   Terra Management Co., Manager

Dated: September 2, 2004

DICKINSON WRIGHT PLLC

By: ___________________________
   Timothy A. Stoopker (P31297)
   Attorneys for Plaintiff
   500 Woodward Avenue, Ste. 4000
   Detroit, MI 48226
   313-223-3500

McGRAW & ECKHARDT, P.C.

By: ___________________________
   Kevin T. McGraw (P41206)
   Attorneys for Plaintiff
   314 M.A.C. Avenue, Ste. 100
   East Lansing, MI 48823
   517-336-6736
Mr. Tamlyn's authority to sign on behalf of those designated is provided pursuant to Resolution of a majority of the Board of Commissioner's of Emmet County, adopted August 19, 2004.
Exhibit B
Site Development Standards

The following Site Development Standards shall run with the land, and shall govern the development of the subject property.

Commercial Standards

1) There shall be a 50' wide greenbelt setback around the entire commercial development, except for along Cemetery Road, which shall require a 100' wide greenbelt setback.

2) The architectural standards shall be reasonably consistent with the standards of the Bear Creek Plaza development to the north. All building fronts shall have brick fronts. Open end walls shall be treated to have a finished appearance, i.e., at least painted to match the facade.

3) In order to reduce impervious area, parking spaces shall be 9 1/4' x 20' with 24' aisles. Parking spaces constructed adjacent to curbs allowing for a 2' overhang may be 9' x 18', except that there shall be no overhang of pedestrian walkways. The number of required parking spaces shall equal at least 5 spaces for every 1,000 square feet of usable floor area, unless the developer can demonstrate to the County Zoning Administrator or designee that 4 spaces per 1,000 square feet is adequate. Developer shall also be entitled to defer the construction of parking spaces pursuant to Section 2202 of the County Ordinance pursuant to review by the County Zoning Administrator or designee.

4) Reasonable vegetative screening shall be installed to screen the loading and trash compactor areas. Any portion of the site disturbed by grading and on which no construction occurs during any six month period shall be planted with appropriate ground cover and properly maintained. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species, as originally planted, within 6 months, weather permitting.

5) Barrier type concrete curbing shall be installed along all on-site entrance roads to the project. Concrete curbing shall be installed around the perimeter of all parking areas and landscaped islands, except in those areas used for snow storage.

6) Developer shall comply in all respects with the lawful requirements of the Michigan Soil Erosion and Sedimentation Control Act, 1972 PA 347, as amended, and any permit issued under the Act.
7) Developer shall comply in all respects with the lawful requirements of the Emmet County Stormwater Management ordinance, as amended, and any permit issued under the Ordinance.

8) Outdoor sales activity including tents, awnings, trailers and the like shall be regulated consistent with Bear Creek Plaza.

9) Outdoor lighting shall be consistent with the Bear Creek Plaza development to the north. Freestanding light standards in the shopping center parking lots, and in the outlot areas, shall not exceed thirty (30) feet in height. Perimeter lighting standards shall not exceed a height of twenty (20) feet. Lights shall have a flush mounted lens parallel with the ground. Similar shading and shielding is required for wall mounted exterior lights. The amount of illumination shall be consistent with County standards and requirements, but shall not be more restrictive than the Bear Creek Plaza development.

10) Signage shall be consistent with the Bear Creek Plaza development to the north. If any business within the development maintains separate and distinct divisions, individual signage shall be allowed on or near the premises for up to three separate business functions. Free standing signs may be aggregated and increased in size proportionately to accommodate multiple tenants. Signage shall be permitted to remain on throughout the entire night time period. The number and sizes of signs shall be consistent with the County's Zoning Ordinance, but shall not be more restrictive than the Bear Creek Plaza development.

11) The developer shall be entitled to one gasoline station and three drive thru's without the need of a special use permit or any type of variance. In addition, drive thru lanes location on outlots and end caps on strip retail buildings are not restricted to the side or rear yard subject to the reasonable review and approval of the County Zoning Administrator and/or designee.

12) Building Heights shall not exceed thirty (30) feet, except for architectural features, the gross area of which shall not exceed twenty (20) percent of the gross roof area and the height of which will not exceed an additional nineteen (19) feet, subject to the reasonable review and approval of the County Zoning Administrator and/or designee.

13) Developer will use its best efforts to site the commercial buildings to make the best use of the property and protect adjoining residential properties to the west, while maintaining its ability to construct the agreed upon density.

Residential Standards:

1) There shall be a 50' wide greenbelt setback around the entire residential development.
2) Building Heights shall not exceed 30 feet as defined in the zoning ordinance.

3) Developer shall install a sidewalk in order to provide a reasonably convenient and safe link from the residential development to the commercial development at the time the commercial development is occupied to the extent that the appropriate location can be determined.

4) No direct motor vehicle access onto Intertown or US-131 shall be permitted.

5) Developer shall install an undulating earthen berm with intermittent evergreens along Intertown Road and Cemetery Road (including Cemetery Road behind the commercial). The berm shall be of sufficient height to provide reasonable screening for off-site residential uses. The berm shall be landscaped with evergreens and other trees and materials, including intermittent evergreens that are 15 to 25 feet in height, (with developer utilizing its best efforts to locate and install 25 foot trees for 35% or more) in accordance with a landscape plan submitted with the final site plan for approval by the Zoning Administrator and/or the County's designee.
the proposed residence is on part of a 67 acre parcel, but is located near an existing residence. The electric, water and septic facilities are in place. The applicant is replacing the existing mobile home with a larger double-wide, hence, expanding an existing nonconforming use.

Conrad asked if there were any comments from the applicant, the applicant answered no.

There was discussion on this being a Zoning Lot, not a recorded or surveyed lot, so it would have to be stated that it could not be sold without adding property.

Behan asked if the applicant owned the trailer to the west, the applicant replied no.

Cobb stated that this was a well screened area, a very nice piece of property. There was discussion on the plan being an improvement to a nonconforming use.

Conrad asked for public comment. There were none.

Behan moved to approve case #4-05 because the expanded residence is part of a 67 acre parcel, the septic, electric and water are all present, it is replacing an old trailer and it meets all the zoning setbacks. Cobb supported the motion, which passed on the following roll call vote: Yes; Kosloskey, Hartman, Cobb, Behan, Conrad. No; None.

5. CASE #129B-80

Dave Kring for Tallberg Chevy, Olds, Cadillac for a variance to the standards of Section 2207-7, height of a flag pole, 1861 US - 31 North, Section 26, Bear Creek Township

Michalek explained the request using a tax parcel map, a site plan and photos. The Ordinance states that flag poles shall not exceed a height of 30 feet. The owner is requesting a 45 foot pole in front of the dealership showroom. The flag pole will be approximately 70 feet from the southerly property line (US-31).

There was discussion on the flag pole height. The site is some six feet lower than US-31, so when the flag is displayed, it is lower than the top of building.

Kosloskey discussed the view to the south being obscured. The applicant stated that he is trying to put the building and the flag in perspective. He stated that the Sign & Lighting Committee agreed.

Conrad asked if it will be metal or fiberglass. The applicant stated metal.

Doernenburg pointed out that the flag pole displayed at Auto World is close to the road, it is on the same grade as the road and is about the same height of the power lines. The gas station has 2 or 3 flagpoles, but they are shorter.

There was discussion on how to measure a flag pole. Doernenburg stated that she could measure it before it is put up. There was discussion on placing a shorter flag pole on a mound.

Conrad stated that she did not favor the idea of a flag being flown above a building. It should be pleasing to the customer, not the people driving down the road.

There was discussion on the elevation plan, Kring stated that Larry Houghton had that information.
Kosloskey asked if the flag size was regulated in the ordinance? Michalek answered, no.

Behan moved to approve Case # 129B-80, a request for a flag pole that is not to exceed 45 feet in height because of the elevation difference with the road and the scale of the flagpole in relation to the building and that there be only one (1) flag pole. Cobb supported the motion which passed by the following roll call vote: Yes; Hartman, Cobb, Behan. No; Kosloskey, Conrad.

IV Other Business

· Enforcement Report

V Public Comment
There was no Public Comment.

VI Adjournment
Chairperson Conrad declared the meeting adjourned at 9:00 p.m.

Minutes Certification:

_________________________________________  ____________________________
Donald Hartman, Secretary                  Dated
DATE: 11/06/2019              CASE #: PZBA19-014

APPLICANT: BELLE TIRE

PROPERTY:  2150 ANDERSON RD

TOWNSHIP:  BEAR CREEK

REQUEST: ____________Variance – sign variance standards apply__________

Facts:
• Parcel is part of a parcel subject to Consent Judgment (attached – Consent Judgment references PUD on RG Properties’ development to the north – that PUD Agreement also attached).
• Zoning Administrator conducted site Plan Review for business use, site plan details, and signage.
• Zoning Permit issued 1/23/2019 – specifically mentioned flagpole and lighting (see attached copy of zoning permit.
• Site is 1.44 acres zoned R-1 One & Two Family Residential (Consent Judgment allows retail use). Overall development is ~80 acres.
• The request is to allow a 60’ high flagpole.
• Flags are regulated under Section 22.07 Signs and Billboards and are specifically regulated as follows: **22.07.7 Flags** Flag pole heights shall not exceed thirty (30) feet. The total number of flagpoles shall be limited to three (3) per site. Flagpoles may not be located in the road right-of-way unless permitted by the road agency having jurisdiction.
• One phone call supporting the height of the pole was received from the occupant at 2226 Cemetery Rd (200-007).
• One email supporting height of flagpole received 2108 Cemetery Rd (200-004)
• Use directly across Cemetery Rd is a Bridge Club.
• Flag is setback over 650’ from Anderson Rd, over 850’ from Lears Rd, over 1,400’ from US 131 Hwy, and 450’ from Cemetery Rd.
• Sections from the Ordinance, which regulate height – see Ordinance Sections referenced: Article 19 Section 19.00 Schedule of Regulations and 19.01 (f) height increases; Section 24.00.4 General Exceptions; Section 25.04.3 Dimensional Variances; Section 26.02 Towers; Section 26.03 Wind Energy Systems.
• Previous review for a flagpole utilized Sign Variance standard and granted a flagpole height variance (Dave Kring Chevrolet – see ZBA meeting minutes 2/17/2005).

General Comments:

Review Standards:
22.07.11 Sign Variances

In order to allow greater flexibility in property and use signing, the Emmet County Zoning Board of Appeals may permit signs that:

A. Exceed the maximum number of signs permitted when there is more than one bordering County Primary or State Trunkline Highway, and the sign is placed directly in front of the building wall, which faces each road, or farther from the intersection line than the wall,

B. Exceed the maximum sign area for the following reasons: Deep use setback, cooperative sign use (joint use or community type advertising), large site area, and/or natural feature limitations to attaining reasonable signing of the use, or if the property shares a common front or side lot line with a B or I Zoning District.

In granting sign variances, the Zoning Board of Appeals shall consider the impact of each sign on adjoining residential districts, scenic views, out of character skyline intrusions, and obstructions to signs or uses on adjoining properties. The purpose of the sign and its applicability to uses that serve tourists or passerby motorists shall be considered in granting or denying a sign exception.

Draft motions:
A motion to approve Case #PZBA19-014, a request by Wayne Shotwell for Belle Tire for a variance to the height of a flagpole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP. Approval is to allow a 60' high flagpole as proposed on the site plan based on the facts presented and because of the deep use setbacks identified in the finding of facts, there are natural feature limitations of topography for visibility, and the development site has large site area, there are no negative impacts on scenic views, it is not out of character due to the height of the buildings in the area, and it will not cause obstruction of signs or uses on adjoining properties. Approval is on condition that there be no additional flagpoles erected on the site. (Additional reasons or conditions may be added here).

A motion to deny Case #PZBA19-014, a request by Wayne Shotwell for Belle Tire for a variance to the height of a flagpole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP, based on the facts in the case and because (additional reasons or conditions may be added here).
REQUEST

PZBA19-015
A request by McBride Remodeling for Matthew and Lissie Canzono for a side yard setback variance of up to five feet to apply to an addition to a residence at 4972 Lower Shore Dr located in section 30 of Friendship Township. The property is tax parcel 24-06-12-30-325-015 and is zoned SR Scenic Resource and RR Recreational Residential. The SR zoning district extends 400 feet from Lower Shore Dr toward Lake Michigan, the remainder of the property toward the west is zoned RR. The request is per Article 25 of the Zoning Ordinance and would allow the addition within ten feet from the side property line.

LOCATION
APPLICATION TO EMMET COUNTY ZONING BOARD OF APPEALS
EMMET COUNTY OFFICE OF PLANNING, ZONING,
AND CONSTRUCTION RESOURCES
3434 HARBOR-PETOSKEY RD, SUITE E, HARBOR SPRINGS, MI 49740
PHONE: (231) 348-1735 FAX: (231) 439-8933

DATE RECEIVED
FEE

PLEASE MAKE CHECKS PAYABLE TO: EMMET COUNTY

Applicant’s Name: McBride Remodeling Phone: (231) 348-2749
Applicant’s Address: 2125 M 119
Applicant’s Email Address: julie@mcbrideremodeling.com
Owner’s Name: Matthew & Lissie Canzano Phone: (248) 880-9143
Owner’s Address: 470 Southfield Rd. Birmingham, MI 48009
Owner’s Email Address: lissiecanzano@gmail.com

JOB SITE LOCATION:
Township: Friendship Tax Parcel #: 24-06-18-30-32-5-015
Address: 4972 Lower Shore Dr.

ZONING REQUEST:
Zoning Board of Appeals:
Dimensional Variance
Expand Nonconforming Use
Interpretation
Sign Variance
Administrative Appeal
Temporary Use Permit
Other

Describe Request:
Change in setback to 10’side yard
from 15’

REQUIRED INFORMATION
Front Yard Setback requested: 40’ Ft.
Side Yard Setback requested: 10’ Ft.
Rear Yard Setback requested: 15’ Ft.
Waterfront Setback requested: 60’ Ft.

Site/Plot Plan required:
9 copies of each document submitted are required.
PLOT PLAN MUST BE DRAWN TO SCALE.

Elevation Drawing
Complete Site Plan

Date Submitted or N/A

REQUIRED:
A complete plot plan drawn to scale is required to show: property dimensions; front, rear, and side yard setbacks; streets, roads, and all existing and proposed structures on the lot and other site inventory such as, but not limited to well & septic location, driveway location, etc. A property survey may be required if deemed necessary for proper review.

Review Article 25 of the Zoning Ordinance for review standard.

Other:
As owner/and or applicant representing the owner, I do X do not ___ authorize Emmet County (staff, appointed board, and/or commissioners, or committee members) to enter upon the subject property for purposes of making inspections related to the project or request identified in this application. If authorized, such inspections or site-walks shall be conducted at reasonable hours and times.

I certify that all the above information is accurate to my fullest knowledge:

Signature of Applicant: [Signature]
Printed Name of Applicant: [Printed Name]
Date: 10-14-19

*Required Signature of Property Owner: [Signature]
Printed Name of Property Owner: [Printed Name]
Date: 10-14-19
October 14, 2019

To whom it may concern,

I am requesting a variance to the side yard setback on behalf of my clients due to the fact that there are conflicting setback requirements shown in the zoning ordinance. Neither myself nor my clients were aware of this conflict in the ordinance and we have proceeded in good faith under the assumption that the 10’ setback called for under article 7 (scenic resource) of the zoning ordinance was correct. This 10’ setback also coincides with the recreational residential district setback which also applies to my clients’ property.

I had already made the initial design of the addition smaller to fit within the published 10’ setback upon receiving the site plan from Benchmark Engineering. Due to the unique design of the existing home it is not reasonable to build this addition to the other side of the home as all second floor circulation is located on the south side.

The requested variance is not only the minimum necessary to accomplish the goals of my clients, but is also of minimal impact to the neighboring property due to the fact that by completing this addition to the existing home, this home will remain far away from the neighboring homes. It was the original intention of my clients to demolish the existing home and build new down on the beach near the neighbors, but after spending time in the existing home decided to remodel and add on to it. This maintains a nice park like setting between the neighboring homes along the lakefront.

The requested variance will not have any adverse impact on the neighboring homes or property. To the contrary, by keeping the home up on the bluff, it makes the neighboring property seem larger and more desirable. As a side note, the neighboring home to the north did receive a variance to their side yard setback and is approximately 8’ from the side yard property line.

I believe this variance is in keeping with the spirit of the scenic resource section of the zoning ordinance in that it maintains the current views from the road which is down a heavily wooded hill from the existing home. It also maintains a more natural setting along the lakeshore by keeping the home so far from the lake. This addition will be nestled into the side of a hill with many trees around it to maintain the natural setting as much as possible.

Thank you for your consideration,

Paul Drayer
McBride Remodeling
B. Setbacks

1. Minimum Front Yard: 40 feet
   a. On nonconforming lots measuring 100 feet or less in width, where two or more primary residences or accessory buildings with more than 200 square feet of ground floor area, are on the same side of the road and located in the same block (or within 200 feet) and have less than the required front yard depth, then the front setback need not be greater than the average depth of the front yards of such buildings, but no such front yard shall be less than 15 feet.

   b. For non-residential lots, parking may be permitted in the front yard, provided there is at least a ten (10) foot buffer area between the road right-of-way and the off-street parking lot.

2. Minimum Rear Yard: 40 feet
   Refer to Section 22.11.2 for Minimum Waterfront Setback.
   (RESIDENCES ONLY: Setback sixty (60) feet from the high water mark.)

3. Minimum Side Yard: 10 feet
   a. On nonconforming lots measuring sixty (60) feet in width or less, one side yard setback may be reduced to five (5) feet for one accessory residential building.
   b. Side yards may be omitted for common walls which abut a side yard, provided the adjoining building is constructed at the same time. Pedestrian access-ways may pass through common walls if constructed to meet all codes.
   c. On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the side abutting the Residential District.

4. Other Regulations
   a. For residential lots with less than 100 feet of width, architectural features such as, but not limited to window sills, cornices, eaves and bay windows may extend or project into a required side yard not more than four (4) inches for each one (1) foot of width of such side yard; and may project or extend into a required front yard or rear yard not more than three (3) feet. Architectural features shall not include those details which are normally de-mountable.
   b. Unenclosed paved areas, patios, and other surfaced areas may occupy a required yard, if such surface is accessory to a residential use.
   c. For non-residential uses - driveways, sidewalks, parking areas, and loading spaces shall not occupy required side yards and/or rear yards unless the Planning Commission approves a plan for shared parking, shared loading spaces, or shared access.
   d. Outside stairways, fire escapes, vestibules, balconies, bay windows, and similar projections from the face of a building extending more than four (4) feet above the established grade shall be considered part of the building and shall not extend into any required yard or open space.
### Article 19

#### Schedule of Regulations

**Section 19.00** Limiting Height, Bulk, Density, and Area by Land Use

<table>
<thead>
<tr>
<th>DISTRICTS</th>
<th>Minimum Lot Size per Unit or Use</th>
<th>Maximum Height of Structure in Feet</th>
<th>Minimum Yard Setback in Feet</th>
<th>Maximum Percent of Lot Coverage by the Area of all Buildings</th>
<th>Minimum Floor Area in Square Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-1 Single Family Residential</td>
<td>½ acre (a)</td>
<td>30 (f, h)</td>
<td>30 (e, g, i)</td>
<td>25 (i)</td>
<td>30% 720</td>
</tr>
<tr>
<td>R-2 General Residential</td>
<td>- (c)</td>
<td>30 (f, h)</td>
<td>30 (b, e, g, i)</td>
<td>20 (b, d, g, i)</td>
<td>35% none</td>
</tr>
<tr>
<td>RR Recreation Residential</td>
<td>½ acre (a)</td>
<td>40 (e, g, i, j)</td>
<td>10 (d, g, i)</td>
<td>35 (i, j)</td>
<td>30% 720</td>
</tr>
<tr>
<td>SR Scenic Resource</td>
<td>30,000 Sq. ft. (a)</td>
<td>40 (e, g, i)</td>
<td>15 (d, g, i)</td>
<td>40 (i)</td>
<td>30% 720</td>
</tr>
<tr>
<td>B-1 Local Tourist Business</td>
<td>none</td>
<td>25 (e)</td>
<td>10 (d)</td>
<td>20</td>
<td>none none</td>
</tr>
<tr>
<td>B-2 &amp; B-3 General Business</td>
<td>none</td>
<td>25 (e)</td>
<td>10 (d)</td>
<td>20</td>
<td>none none</td>
</tr>
<tr>
<td>P-T Parking Transition</td>
<td>-</td>
<td>See (4)</td>
<td>10 (d, i)</td>
<td>20 (i)</td>
<td>-</td>
</tr>
<tr>
<td>I-1 &amp; I-2 Light &amp; General Industrial</td>
<td>none</td>
<td>30 (f, h)</td>
<td>30 (e)</td>
<td>10 (d)</td>
<td>20 none none</td>
</tr>
<tr>
<td>FF-1 Farm Forest</td>
<td>1 acre</td>
<td>40 (e, g, i)</td>
<td>20 (d, g, i)</td>
<td>35 (i)</td>
<td>35% 720</td>
</tr>
<tr>
<td>FF-2 Farm Forest</td>
<td>2 acres</td>
<td>40 (e, g, i)</td>
<td>20 (d, g, i)</td>
<td>35 (i)</td>
<td>35% 720</td>
</tr>
<tr>
<td>FR Forest Recreation</td>
<td>40 acres</td>
<td>40 (e, g)</td>
<td>20 (d, g)</td>
<td>35</td>
<td>35% 720</td>
</tr>
</tbody>
</table>

**PUD** SEE ARTICLE 17

(1) For permanent dwelling units and not cottages, cabins, motels or similar uses.
(2) These provisions shall not apply to structures four (4) feet in height or less.
(3) Refer to Section 22.11 for Minimum Waterfront Setback.
(4) FOR RESIDENCES ONLY: Setback sixty (60) feet from the 1986 High Water Mark. (IGLD 582.35', 10/86)
(5) Outside stairways, fire escapes, vestibules, balconies, bay windows, and similar projections from the face of a building extending more than four (4) feet above the established grade shall be considered part of the building and shall not extend into any required yard or open space.

(a)-(j) See notes to Section 19.00, on the pages following.
October 6, 2019

To Whom It May Concern:

Our neighbors, Matthew and Lisabet Canzano, at 4972 Lower Shore Drive, Harbor Springs MI are planning to build an addition on their home. We understand that their plans would extend beyond the 15 foot setback outlined in the existing "Scenic Setback" parameters for Lower Shore Drive construction. We also understand that their plans would still stay within the standard 10 foot setback required for new construction in general.

As owners of the neighboring property that will be affected by this variance, we give our approval to Matthew and Lisabet to build beyond the 15 foot "Scenic Setback".

Sincerely,

Marty and Cheryl Zofchak
4982 Lower Shore Dr.
Harbor Springs, MI 49740
View of driveway from Lower Shore Dr.
View of roadside of home coming up the driveway. Note the hill obscuring the view on the left side of the home where the proposed addition would go.
View of the home from down near the lake. Shoreline is mostly treed.
View of the side of the home where the proposed addition would go. Note the slope to the neighbors side which would help to minimize the exposed height from that side.
DATE: 11/06/2019              CASE #: PZBA19-015

APPLICANT: McBride Remodeling for Matthew D Canzano, Lisabet Heinkele

PROPERTY: 470 Southfield Rd

TOWNSHIP: Friendship

REQUEST: Variance – side yard setback

Facts:

- Property contains two platted lots within the Plat of Seven Mile Point Shores – it is comprised of four tax parcels used as one zoning lot.
- Part of the parcels lie within West Traverse Township. House is located completely within Friendship Township.
- Property is narrower at Lower Shore Drive (81’) than at the Lake Michigan shoreline (131.45’).
- House is at a conforming location on the property, meeting all setback standards of the SR Scenic Resource Zoning District.
- Proposal is to add onto the existing house on the southerly side using a 10’ side-yard setback standard.
- Zoning Ordinance improperly listed the setback as 10’ in the SR Zoning District (see information provided by applicant).
- Applicant has provided rationale for request.
- Property is zoned SR Scenic Resources and RR Recreational Residential.
- Setback standards at location of house: Front: 40’; Sides: 15’ (Scenic Resources); Waterfront: 60’. Requested setbacks: Sides: 10’ 3.25” (southerly side); 32.75’ (existing northerly side); Waterfront: 256.5’.
- Letter of support received from adjacent property owner to the south.
- Township recommended approval.

General Comments:

Review Standards:
SEE ATTACHED ARTICLE 23. GENERAL PROVISIONS NONCONFORMITIES

A. Dimensional Variance
Permit variances from the strict requirements of this Ordinance, so that the spirit of the Ordinance is observed, public safety is secured, and substantial justice done, but only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:
1. That the practical difficulty was not created by an action of the applicant or property owner (self created); and either existed at the time of adoption of the requirement from which the variance is requested, or is necessary as the result of governmental action such as a road widening.

*The current Zoning Ordinance incorrectly listed the side-yard setback standard in the SR District as 10 feet in both the graphic and the text. This could be considered an action of government as the contractor relied on that information in planning the addition.*

2. That the strict compliance with the regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.

*The existing building is conforming. Due to the configuration of the existing house and topography, an addition may be difficult without the variance. The proposed addition provides additional living area.*

3. That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.

*Based on the angle of the house, the area within the side yard setback is minimal.*

4. That the requested variance will not cause an adverse impact on surrounding property values, or the use and enjoyment of property in the neighborhood or zoning district.

*The most impacted neighbor has supported the request. This would not appear to have an adverse impact on the neighborhood or zoning district. The site is wooded and the location of the house screened from the public.*

**Draft motions:**

A motion to **approve** PZBA19-015, a request by McBride Remodeling for Matthew and Lissie Canzono for a side yard setback variance of up to five feet to apply to an addition to a residence at 4972 Lower Shore Dr located in section 30 of Friendship Township as shown on the site plan dated Received Oct 18 2019. The property is tax parcel 24-06-30-325-015 and is zoned SR Scenic Resource and RR Recreational Residential. Approval is based on the facts presented in this case, the practical difficulty is a result of an error in the Zoning Ordinance, the variance request is consistent with the RR zoning district setback standards and is the minimum necessary to do substantial justice to the applicant and other property owners in the district, and it will not cause an adverse impact on surrounding property values, or the use and enjoyment of property in the neighborhood or zoning district and *(additional reasons or conditions may be added here).*

A motion to **deny** PZBA19-015, a request by McBride Remodeling for Matthew and Lissie Canzono for a side yard setback variance of up to five feet to apply to an addition to a residence at 4972 Lower Shore Dr located in section 30 of Friendship Township as shown on the site plan dated Received Oct 18 2019 for the following reasons: *(reasons must be added here).*
BOUNDARY & LOCATION SURVEY
RATLIFF PROPERTY
LOTS 22 & 23
SEVEN MILE POINT SHORES
FREDOSHIP TWP., EMMET COUNTY, MICHIGAN

SCALE 1" = 40'

LEGEND:
○ WELL
● FOUND SURVEY IRON
■ FOUND CONCRETE MONUMENT
○ SET BOG NAIL
PROPERTY LINE
PAVED SURFACE

NOTES:
The property description was furnished, and no check of title relative to ownership, gaps, overlaps or occupation
has been performed as part of this sketch.

Bearings and Distances as shown on this map are based on a previous
survey done by this office for Nickelski, dated July 20, 2006.

The elevation of Lake Michigan was determined by a water transfer from the
city dock on October 7, 2003. The elevation is based on the 1985 NGVD datum.

** The intermediate traverse line was revised from a dark, double weight line
to a single weight dashed line, per the request of Charles Bouch of ISCM Mortgage.
<table>
<thead>
<tr>
<th>Meeting Date</th>
<th>ZBA 6:00 pm.</th>
<th>Submission Deadline</th>
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<tbody>
<tr>
<td>Tuesday, January 21, 2020</td>
<td></td>
<td>Monday, December 30, 2019</td>
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<tr>
<td>Tuesday, February 18, 2020</td>
<td></td>
<td>Monday, January 27, 2020</td>
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<td>Tuesday, March 17, 2020</td>
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<td>Monday, February 24, 2020</td>
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<td>Tuesday, April 21, 2020</td>
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<td>Monday, March 30, 2020</td>
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<tr>
<td>Tuesday, May 19, 2020</td>
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<td>Monday, April 27, 2020</td>
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<tr>
<td>Tuesday, June 16, 2020</td>
<td><strong>DUE TO MEMORIAL DAY</strong></td>
<td>Friday, May 22, 2020</td>
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<tr>
<td>Tuesday, July 21, 2020</td>
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<td>Monday, June 29, 2020</td>
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<td>Tuesday, August 18, 2020</td>
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<td>Monday, July 27, 2020</td>
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<td>Tuesday, September 15, 2020</td>
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<td>Tuesday, November 17, 2020</td>
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<tr>
<td>Tuesday, December 15, 2020</td>
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<td>Monday, November 23, 2020</td>
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</table>
To: Emmet County Planning Commission, Zoning Board of Appeals & Board of Commissioners
From: Planning & Zoning, Tammy Doernenburg Director
Date: Prepared for Emmet County Planning Commission October 2019 meeting
Subject: Status of Enforcement Issues

1. **Maple River** – 9/11/2017 – Sent letter to 2526 Gregory Rd – accessory building without a main use – no SUP. House was to be started within 2 years, no accessory. Building application is not completed. 11/28/2017 sent letter requesting compliance. 12/20/2017 No response to date. 1/12/2018 – site not accessible. 5/9/2018 sent letter to owner. 5/24/2018 SUP applied for – will be on the August 2018 PC agenda. SUP denied at 8/2/2018 PC meeting. Letter sent to owner requesting removal of structure. Follow-up needed after snow melt. 5/16/2019 confirmed violation still exists – sent violation letter requesting building be removed.

2. **Littlefield - 4700 Oden Rd / 4653 Pangbuin St** – 4/17/2018 – during ZBA case review of neighboring property, discovered encroachment from this subject property. Staff to investigate further. 5/21/2018 – letter sent to owner. Received call 5/24/2018 from owner who is meeting with association Memorial Day weekend. Will explore options. 6/6/2018 received call from property owner within association. Still exploring options with neighboring property owner and road vacating. 6/26/2018 – received call from property owner – meeting with township regarding vacating platted roads. 8/9/2018 – owners met with township Board to discuss options regarding platted roads. MDOT consulted regarding claim of state right-of-way for one platted road – determination made MDOT does not claim rights to either platted road 8/20/2018. Owners seem to be working toward compliance. 11/15/2018 received email of status – owner attempting to abandon roads and convey to appropriate adjacent properties to allow mobile home to remain at its current location. 11/20/2018 spoke with property owner representative and requested update in 30 days. Working toward resolution. 12/21/2018 – meeting with Civil Counsel to work toward next steps. 1/2/2019 letter sent to both the property owner and mobile home owner. No response from mobile home owner, property owner claimed no responsibility. Violation letter 2 sent 1/23/2019. No response from mobile home owner to date. Property owner at 4653 Pangbuin St has sent responses. 2/7/2019 Sent Final Notice. 3/6/2019 Notice of Violation issued. 3/8/2019 corresponded with attorney for Bossingham. Provided options. 3/15/2019 received proposed lot split plans. 3/20/2019 Advised attorney of options for compliance. Communication continues with attorney and surveyor. 5/22/2019 ZBA reviewed variance requests. Variances denied. Violation continues. 7/9/2019 appeal to Circuit Court filed. Civil Counsel reviewing. 7/24/2019 response filed by Emmet County – awaiting court review and direction. Court received the record. Civil Counsel responding to Appellant’s Brief – due 10/29/2019.

3. **Carp Lake – 8772 Paradise Tr** – 6/25/2018 – received phone call of too tall sign. Investigated and found new sign – no permits. Sent letter same day. 7/10/2018 – received phone call from owner. Sign was installed, is too tall, is in road right-of-way and is too large in area. Gave options to owner and asked for compliance. 7/20/2018 – owner applied for ZBA review. 8/6/2018 ECRC denied road commission permit application for sign located in road right-of-way. 8/6/2018 – owner withdrew ZBA request. 8/20/2018 – sign still at same location. Sent follow-up letter to owner requesting removal of sign. 9/10/2018 – sign has been moved, but is still visible from the road. Follow-up needed. Received call regarding outdoor lighting installed on cottages with glare onto neighboring property. Visited site 1/18/2019. Letter to be sent. 2/7/2019 – follow-up letter sent. Received call from owner who claimed harassment. Sent information for sign variance and lighting standards. 3/4/2019 received complaint from owner regarding enforcement. Advised by owner not to enter property. 3/20/2019 visited site from neighboring property and road. Lights are out of compliance and glare onto neighboring property. 4/5/2019 received follow-up letter from owners. 4/11/2019 sent response letter inviting ZBA application. 5/13/2019 received ZBA application. Visited site 5/17/2019 – unable to determine compliance of lights. Will visit after dark. Site visited 5/24/2019 – one light compliant, one light not compliant. Sign area approved by ZBA, sign height not approved. 8/21/2019 visited site. No change. Owner to be contacted. 9/11/2019 letter sent. Site visit conducted – no change.

4. **Friendship Township** – 3485 S Lake Shore Dr – complaint of tree-cutting and RV use. Follow-up needed.


6. **Littlefield Township** – Petoskey St - Ponsheawaing – rental nuisance complaint. Follow-up needed.

7. **County-wide – PC** – Discussion needed regarding RV use on lot without a main use.


9. **Bear Creek – 1700 Anderson Rd** – 6/27/2018 - complaint of outdoor storage/sales in unauthorized area. 6/29/2018 – contacted Fire Chief regarding display/storage in fire-lane. He indicated he’d contact the store and asked that I address storage in back of store. 7/16/2018 -
Sent letter. Received call from manager indicating store is now in compliance. Requested a site visit. Site visit conducted 8/16/2018 – called manager, not in. Follow-up needed. 12/20/2018 – site visited. Letter to property owner prepared to address development as a whole. 2/8/2019 received email from property manager. Met with property manager for adjacent parcels. Need to reach out to different property manager for this property.


11. Bear Creek – 5322 Evergreen Tr – 4/26/2019 report of RV being used in front yard. RVs may be occupied for 60 days in a calendar year. Will monitor.


15. Bear Creek Twp- 2000 Fochtman Industrial Park Dr – based on complaint made during PC meetings for 2020 Fochtman Industrial Park Dr – spoke with ECRC. Plan to meet on-site and review drainage for adjacent property.

16. Bear Creek Twp – 2157 Howard Rd – complaint of hours of operation being violated. Follow-up needed. 9/6/2019 – emailed owner.

17. Bear Creek Township – 796 Bellmer Rd – rental nuisance complaint. Follow-up needed.


20. Bear Creek Township – 528 N Fletcher Rd – 9/17/2019 – complaint of building being constructed without a permit. Sent letter to owner 10/3/2019. 10/16/2109 Received phone call from owner indicating he would apply and that the building was a farm use building. No application received to date (10/23/2019).