# TOWNSHIP CIVIC COMMUNITY CENTER 12060 MANTAWAUKA DRIVE, FENTON, MICHIGAN

Chairman Tucker called meeting to order at 7:05 p.m.

Present: Franz, McGuirk, Richard, Tucker

**Zoning Administrator Piggott** 

Recording Secretaries McDonald & Sharich

Also Present: Zoning Board of Appeals members, Baran, Goupil & Spear

Absent: Carlson, Root, Spees

Secretary Pro- Tem McGuirk chosen

### **APPROVAL OF AGENDA:**

Chairman Tucker noted Steve Englund, 5341 Lobdell, had written a letter and was in attendance to speak to the Commission regarding concerns about the location of the entrance to Elder Oaks. Tucker asked that public comment on non-agenda items be moved to the 1<sup>st</sup> item after the public hearing.

Motion to approve the agenda as amended

Motion by: McGuirk Seconded by: Franz

Ayes: Franz, McGuirk, Richard, Tucker

Nays: None

Absent: Carlson, Root, Spees

Motion carried

#### **PUBLIC HEARING**

Amendment to the Zoning Ordinance to allow adult foster care/assisted living in C-1 and C-2 zoning districts as a use permitted by special use permit.

Piggott explained the Zoning Department had been approached by a property owner with a request to operate an adult foster care/assisted living facility in an existing building in the Township that had been used as a day care facility. Piggott added the property is currently zoned C-2 and adult foster care/assisted living is not a permitted use in C-2. After discussing the property owners options the Zoning Department felt the best option would be to ask if the Township felt this type of use would be appropriate in the C-1 & C-2 districts as a use permitted by special use permit. Piggott explained that these types of facilities are permitted in the residential districts because of their residential characteristics and the first issue that should be addressed is whether or not the applicant even needs the Township's permission to use the property for an adult foster care home. Section 206 of the Michigan Zoning Enabling Act of 2006 specifies that "a state licensed residential facility shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone." Since C-2 is not a residential zone, it would appear that the provision does not apply. Even if the definition of residential zone were interpreted very broadly to include any district in which residences are allowed, the proposed use would not be allowed because the only residential uses allowed in the C-2 district is apartments on the second floor of commercial buildings. The second issue is whether or not an adult foster care facility should be allowed in the commercial districts. Adult foster care facilities are dwellings for the 24 hour care of persons with physical or mental disabilities. They are licensed by the State of Michigan and are divided into four classifications: adult foster care family home for the care of up to 6 individuals, where the operator of the facility lives in the home with the clients, adult foster care small group homes, 1-6 that allow for up to 6 residents

but the operator does not live on site, adult foster care small group home 7-12 that allow for up to 12 residents and adult foster care large group homes that allow 13-18 residents. Currently the Township Zoning Ordinance allows adult foster care family homes and small group homes 1-6 in all residential districts by right and small group homes 7-12 and large group homes in all residential districts by special use permit. Many communities severely limit the non-commercial uses allowed in their commercial district. This is based on the idea that commercial areas are strongest if they contain a high concentration of commercial uses that attract a wide range of consumers. Allowing non-commercial uses is thought to weaken the district. Another concern is the potential of increasing land use conflicts between residential and non-residential uses. In many districts residences are only allowed as an accessory use, such as a second floor apartment. That is the case in the Fenton Township ordinance. Other communities allow for relatively wide range of non-commercial use in their commercial districts. Some communities allow residential uses to provide customers for businesses within the district. Others allow for wide range of uses to provide flexibility to the owners of commercial buildings during down times in the economy. Still others allow them because their ordinance uses the "pyramid" approach to land use classifications where the more intensive districts (such as commercial) allow for all uses in the less intensive districts (such as residential). Some would argue that an adult foster care home is a commercial use. While the use does involve a commercial transaction, for the occupants it is their primary residence. Chairman Tucker called for audience comments. Robert Canning, 1381 Edgewater, asked about the difference between the day care operation that existed (at 14569 Fenton Rd.) and an adult foster care. The Commission explained that the day care had certain hours that they cared for their clients and the foster care situation would provide 24 hour care. Canning noted he did not think this operation, at this location, would diminish the commercial district. He added he felt it should be a use permitted by right. Tucker and McGuirk stated that not all sites would be appropriate and as a use permitted by special use permit each location could be judged on its merit rather than a use permitted by right in any commercial district. Richard and Franz stated concerns about safety and the amount of traffic in most commercial areas. Franz added concerns about the adverse affect this use could have on future commercial development. Tucker suggested this matter be postponed until more members are present because of the differing opinions.

### PUBLIC COMMENTS & COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA

Chairman Tucker called for public comments on non-agenda items. Steve Englund, 5341 Lobdell, stated concerns that the location of the entrance to the Elder Oaks development will direct vehicle headlights into his home. He noted that until the property was more completely staked he could not tell where the driveway would be located. He asked the Commission to require the driveway location be moved to the east about 15 – 20 ft. Tucker explained that this is an approved site plan; the entrance cannot be moved because of the location of the retention area. Franz concurred stating at this point the Commission cannot require the developer to move the entrance. Tucker offered to speak to the developer about planting some trees or something to screen vehicle lights from his view. The Commission discussed an effective location for screening. The only effective location for screening would be on Englund's property. Englund stated he would rather they move the entrance. Franz pointed out that, at this time, the best offer is for the Commission to ask the developer to provide screening. Englund said if that is the best they can do it would be better than nothing. Tucker stated he would contact the developer to see what he could do.

#### OTHER BUSINESS/ON-GOING BUSINESS

#### Accessory buildings

Tucker explained a concern had been brought before the Township Board and the Commission that the Township Ordinance Article 4, Section 4.02 which regulates accessory buildings in the

Township is too restrictive when it comes to maximum size. He added discussion began at the last meeting and the Zoning Administrator and Zoning Board of Appeals had been invited to this meeting to add to the conversation. Piggott explained Fenton Townships approach of applying a sliding scale based on lot size is something that was incorporated into the ordinance in 2002 to address the excess number of Zoning Board of Appeals applications for more building than allowed. It was noted by recording secretary Sharich, in answer to a question from Tucker that the number of applications since the amendment has been reduced to about 1/4 of those applying prior. Spear concurred. Recording secretary McDonald distributed maps illustrating allowing for 30% lot coverage as suggested at the last meeting. Franz noted this approach is not the desire of the Township. Piggott explained that municipalities regulate the maximum size to insure that lots are not dominated by accessory structures detracting from the residential character of a neighborhood. Chairman Tucker called for audience comments. Canning, 1381 Edgewater explained that he had brought this to the attention of the Township Board because many residents in the Township agree that the ordinance is too restrictive. He alleged the Zoning Board of Appeals is not consistently applying standards to all applications for more building than allowed. Spears noted the criteria for approving variances is clear and as far a she in concerned constantly applied to every application. Goupil and Baran stated not all members adhere strictly to the criteria when it comes to variances for accessory buildings because the nature of the area is to have more items to store and the preference for those items to be inside a building rather than outside. They stated each case is analyzed on its own merit; however there is a difference of opinion in the strict application of the criteria from member to member. After discussion the Commission agreed that allowing up to 30% lot coverage would be too much. Franz asked if Canning agreed. He did. Tucker suggested not counting the attached accessory space in the equation for the allowable maximum square footage. Piggott gave an example of someone attaching a pole barn to the primary residence by a breezeway. The Commission concurred that would be a possibility that would produce an undesirable outcome. Spear noted Canning should apply to the ZBA before making any assumptions that his application would be denied. Canning replied that he was advised by staff that it would be denied. Recording secretary Sharich stated she does advise those she speaks with, if they are asking for something that is in excess of that which is likely to be approved, however she noted she tells everyone they have the right to ask for anything. Richard stated, as this discussion has illustrated, there has to be some regulation. What is in place now is working, in most cases, and everyone has the option to approach the ZBA if they feel there circumstance warrants a variance from those regulations. It was the consensus of the Commission and the ZBA members present not to pursue an ordinance change at this time.

#### Membrane storage structures & Portable on-demand storage structures

Tucker explained this had gone to the Township Board and several things had been changed at a workshop so the Board asked the Commission to look at it again. The Commission agreed to the changes the Board had made. Chairman Tucker called for audience comments. There were none. Tucker went through the amendment and indicated several typographical errors and points that needed clarification. Piggott was directed to make the changes and send it back to the Board for 1<sup>st</sup> reading.

### **Fences**

Recording Secretary Sharich explained at the last ZBA meeting it was noticed that fences around pump stations was a category found under a heading referring to "Recreational Uses". After discussion and a call for audience comments, to which there were none, the Commission agreed to eliminate the heading "Recreational Uses". The other issue Sharich explained was the ZBA thought there should be a time limit placed on temporary fences. There was discussion about the difficulty in requiring zoning permits for temporary fences, the cost and the nature of

the fences for example a snow fences time limit would depend on the snow season, also it was agreed that most people would not know or even think of getting a permit for temporary fences. In the end the Commission and those ZBA members in attendance decided the best way to address the issue would be to further clarify the definition of a temporary fence in the actual section of the ordinance that provides for standards for fences.

### Cell tower ordinance

Chairman Tucker explained concerns about our cell tower ordinance were brought up at a recent Township Board meeting. Piggott explained he had researched material given to him by the staff that invoked the discussion at the Board level. He noted the information that the concerns were based on was proposed language to the existing regulations for cell towers. At this time that language is not law and therefore does not affect the validity of the Townships cell tower ordinance. There was a suggestion that the Township prohibit cell towers in residential zoning districts. Piggott explained the law requires that you provide coverage he said prohibiting them in residential districts in an area that is mostly residential could and probably would be so restrictive that it would interfere with coverage. Piggott said our ordinance is sound and defensible as far as he was concerned.

**MINUTES:** September 16, 2008 stand approved as submitted

ADJOURN: 9:50 p.m.

John Tucker, Chairman

Minutes Posted 10/31/08

Jim McGuirk, Secretary Pro-Tem