

CRYSTAL LAKE TOWNSHIP
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ZONING BOARD OF APPEALS
PUBLIC HEARING FOR REQUESTED VARIANCE
MAY 9, 2019

1. CALL TO ORDER/PURPOSE OF MEETING:

Hearing called to order by Vice Chair George Stemple at 6:00 pm.

2. ROLL CALL:

- a. Present: George Stemple (Vice Chair), Greg Wright (CLT Planning Commission Liaison), Alternates Alan Marble and Dean Michaels.
- b. Absent: Richard Lutz (Chair) has resigned.
- c. Also Present: Tom Kucera, Zoning Administrator; Sue Sullivan, Acting Recording Secretary.

3. CALL FOR CONFLICT OF INTEREST: None.

4. APPROVAL OF AGENDA:

Zoning Administrator asked to amend agenda to remove items 7 and 8 relating to 2817 Pilgrim Highway, which will be postponed at the petitioner's request to May 23, 2019. **Marble moved the amended agenda be approved. Wright seconded. All ayes. Amended Agenda approved.**

5. RULES OF ORDER:

Stemple directed attention to the Rules of Order and Time Limits for Speakers.

6. 3533 CASEY ROAD – REQUEST FOR APPEAL – A. KULLENBERG:

- a) PUPLIC HEARING OPENED: Tom Kucera, Zoning Administrator (ZA) explained that this appeal was to hear a request to rescind a zoning permit issued by the ZA to the current owner, Mr. Steenstra, to rebuild and remodel a previously existing 4-unit apartment building, which the ZA had determined to be a lawful, non-confirming use. The applicant also requests that the ZA rescind the building permit, reverse his decision that all 5 buildings on this parcel and the adjoining parcel were lawful, non-confirming uses, find all the buildings to be illegal, non-confirming uses and forbid any further construction on these two parcels that does not conform to current zoning.
 - ADMINISTRATION OF OATH: Administered to Speakers by Marble.
 - APPLICANT PRESENTATION: Ann Kullenberg, 3483 Casey Road, presented the Board with copies of exhibits (enclosed) and referred to the "Statement of Justification for Requested Action" in her appeal application; she stated that the proposed use was not non-confirming, that the previous use had been discontinued years before and the building was considered abandoned. She also referred to an email from William Herd, Vice Chair of the Crystal Lake Township (CLT) Planning Commission (PC), requesting that the ZA delay or rescind the zoning permit to allow the PC time to study the matter, but the ZA chose to issue the zoning permit the next day. She concluded that there were already too many buildings on the property, that it "adversely affects the environmental conditions and value of surrounding property" and has a history of "egregiously improper disposal of garbage".

- PRESENTATIONS IN SUPPORT:
 - Jerry Lewallen, 3483 Casey Road, (written statement enclosed) referred to the May 8, 2019 letter from Kullenberg's attorney, Mr. Steiner, and objected to the Zoning Administrator's finding that he was required to issue the permit based on the holding in the *Township of Fraser v Haney* case (*Fraser*); he also stated that his personal observation was that the building had not been in use as a multi-family dwelling for at least 10 years and there was evidence that Central State Bank was considering its removal. He also argued that the Interior Remodel estimate of \$257,700.00 is greater than 50% of the assessed value of the building and can't be justified as Repairs and Maintenance. He concluded that the building was a candidate for removal and referred to the ZA's statement in Oct. 2017 that the building was "unsafe".
 - Joanne Herban-Snow, 300 Onkeonwe Road, distributed pictures of trash improperly disposed of by the property occupants, and stated that as a neighbor, she had observed uncollected trash on the property for years and knew that occupants of the property had used Onkeonwe as a public access to the beach, but had left baby diapers and trash bags both along the access and on the beach. She concluded by asking who was going to be responsible for the property and the trash problems caused by the occupants.
 - Kurt Vigneau, 3263 Casey Road, also opposed the issuance of the permit and referred the Board to the findings in the *Fraser* case, which relied on a finding of "public nuisance".
 - William Herd, 3035 Glory Road, stated that he was surprised the permit was granted for a number of reasons, that there was agreement that the number of apartments allowed should be based on what the number was before the ordinance went into effect, but there was no documentation of what that number was and it was the person seeking the permit who had the burden to provide that documentation; he also questioned the validity of the permit since the zoning ordinance does not define the difference between rebuilding and remodeling. Stemple stated that the intent of the owners was to remodel, but they now say they cannot remodel without starting from scratch. Lewallen stated that they obviously knew the building was a tear-down, because they started with an excavator.
- PRESENTATIONS IN OPPOSITION:
 - Chris Howard, 939 Beulah Hwy, Beulah, MI, owner of Cottage Pros and manager of the property for the owner, Steenstra, said their original request for a PRD was denied, so they decided to remodel and keep the walls, but soon discovered that since the building had not been rebuilt to code in 1996 after a fire, they had to remove the walls and part of the foundation; they still considered their actions to be remodeling, since they stayed within the original footprint, although they did change the pitch of the roof; he did search for and find a zoning permit that was approved 26-30 years ago which was the basis of subsequent septic and well permits, as well as the permit which authorized the rebuilding of the four units after the fire 1996. He explained that the building was vacant for 10 years because the property was in foreclosure, but the current owner has made many

improvements, such as hiring professionals like Cottage Pros to manage the property, improving the quality of the renters, and making arrangements to put a larger trash dumpster further from the road and closer to the buildings.

- STAFF PRESENTATION: Tom Kucera, Zoning Administrator, said that records show the property has been in use as a single building since before 1981 and multiple buildings and multiple families since 1987 and that the number of dwellings has increased over time, but he has not found a record of any approved variances. Section 28.8 states that nothing should prevent repairing to restore safe conditions so it is appropriate to bring conditions up to code. Prior records show that the property was designated “Resort Commercial” until 1984, when it was designated “Agricultural Residential”, single family until 1994, when it was first designated “Rural Preservation”.
 - Peter Wendling, Attorney, said that the statute of limitations issue in *Fraser* is not relevant here because the current usage existed during the two month period between when Benzie County zoning ordinances stopped being in effect on March 31, 2010, and when the current CLT ordinances went in effect 30 days after adoption on April 29, 2010, and it is therefore a lawful non-confirming use since it can be considered as starting fresh in 2010 and had four units when inspected. He explained that (1) lawful non-confirming use does not stop just because the building is vacant, (2) section 28.8 allows for ordinary repairs not to exceed 50% of the value or an increase in cubic volume, (3) section 28.3 refers to involuntary destruction, such as by fire, and (4) there has been no enlargement at this point. He concluded by saying that if this case proceeds to court, it could be expensive for the owner to build any further before a court determination, so it might be better to cease and desist building at this time.
- REBUTTALS:
 - Fred Snow, 300 Onkeonwe Road, asked if trailers and manufactured homes are considered apartments. Kucera said there is only one trailer and the other buildings are considered modular. Chris Howard said the modular units were two-family homes. Wright suggested that the appropriate terminology to use in this case was “dwelling units”.
 - Kullenberg said whoever manages the property now is irrelevant if the property is sold and new owners do not manage it well. Further, she said there is still no clear documentation that the occupancy of the buildings was ever legal, probably because there was no previous zoning ordinance enforcement and more research is necessary to determine the legal relevance of the 2-month gap in zoning ordinances. She also said there was still no screen around the garbage area and she has no faith that there will be compliance with other issues; that anything more than single family use has been consistently and expressly denied in this district.
 - Lewallen said that section 28.8 only applies if there is an explicit order to tear down by the Township. He believes that the majority of the foundation was torn out, new footings were installed and the walk-out area is larger. Howard stated that $\frac{3}{4}$ of the foundation remains; and he has discovered permits from 1995 approving four units in the blue building.

- Vigneau asked what constitutes the first day of CLT zoning. Wendling said again that whatever existed when the new zoning went into effect, even if it did not conform to the new zoning, constituted a lawful non-conforming use.
 - Herd said the burden of proof of how many people were living in the apartments in 2010 lies with the person applying for the permit and there is no evidence of what that was in 2010.
- b) PUBLIC PORTION OF HEARING CLOSED at 7:20 p.m.
- c) BOARD DISCUSSION/DELIBERATION: Marble said he was interested in and understood the concerns stated, but found that much of the discussion was not relevant to the issue at hand and believed that more legal clarification is needed regarding (1) the window of time when there was no zoning in effect, (2) the distinction between remodeling and rebuilding, and (3) the period of apparent abandonment. Wright said he was sympathetic to Kullenberg, but more information is needed and limiting or denying further expansion may be an issue to consider. **Marble moved that further discussion be postponed to Thursday, May 30, 2019, at 6:00 p.m. to allow for further review and documentation. Stemple seconded. All ayes. Motion to postpone passed.**
7. ADJOURNMENT: 7:30 p.m.

Respectfully submitted,
Sue Sullivan, Temporary Recording Secretary