

**ACME TOWNSHIP
Zoning Board of Appeals
February 10, 2005**

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

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

Members present: J. Kuncaitis (Chair), D. Kipley, D. Krause, D. Smith

Members excused: L. Belcher, P. Collins

Staff present: J. Hull, Zoning Administrator
S. Corpe, Office & Planning Coordinator/Recording Secretary

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** Approved with no conflicts of interest noted.
2. **Correspondence:** None
3. **Reports:** None
4. **Hearings:**
 - a. **Public hearing for Greg Messenger, represented by Kim Messenger, for a determination under §9.5 that the extension of a non-conforming structure—adding a second story to the house at 5285 US Highway 31 North—will not be inimical to public health, safety, or welfare, particularly with regard to surrounding property owners.** (Attachment A included and incorporated by reference): Hull read the published hearing notice into the record. Mr. Messenger was present in support of the application. Hull also read a letter dated January 30, 2005 from Greg Messenger, the property owner which gives Kim Messenger the ability to act as his agent. One phone call was received today from Michael Srdjak, Surfside Motel, stating that he had no objection to the application.

Mr. Messenger would like to add a second story to an existing waterfront home. The second story would not be cantilevered or create new footprint except for a new deck supported by a post on the second story where no building footprint currently exists. Smith expressed some concern about the additional deck. Kipley has litigated a similar circumstance regarding a Peninsula Township property that burned to the ground. It was a small cottage on the beach that could not have been built according to current zoning. A plan that did not propose changes in any detail to the footprint of the cottage was approved by the township, although the new structure was taller than the previous structure. The new second story was proposed to have a sliding door that opened towards the bay, and contrary to the plan approved by the township they built a very small cantilevered deck just large enough for one or two chairs. When discovered, the township cited the property owner for a misdemeanor. The property owner was subsequently found guilty and had to remove the deck or face jail time. The cantilevered

nature of the deck versus having the new footprint on the ground did not provide an “out.”

Kuncaitis cited precedent permitting non-conforming structures to be rebuilt to the same footprint in cases where damage has occurred. About half the time the ZBA has allowed additions to non-conforming structures. This request seems to encompass both aspects. He has no difficulty with the construction of the second story to the same footprint. Regarding the cantilevered deck, it will not cause the structure to come any closer than it currently does to the waterline, and he doubts that any members of the public would have cause for concern.

Hull read from Section 9.4 of the ordinance in support of the example Kipley provided, and noted that the request for the deck is really discussed under Section 9.5, Extension of Nonconforming Use of Structure.

Public Hearing opened and closed at 7:50 p.m., there being no public comment.

Motion by Smith, support by Kipley to approve the request as presented. Motion carried unanimously.

- b. **Interpretation of §6.11.1, Schedule of Regulations, regarding the application of the Maximum Heights of Structures.** (Attachment B included and incorporated by reference): The ordinance contains a table that provides various dimensional requirements for property development. One of the dimensional requirements deals with maximum structure heights, which is given in both number of stories and feet. In the past, based on advice from legal counsel, land use permit applicants have been requested to meet either the stories or footage requirement. In the past, Hull has encountered individuals who have argued the requirements independently of one another, and can conceive of situations where a 100' tall building could be approved (if 2 ½ stories are allowed, both stories might have cathedral ceilings) when along with 2 ½ stories the other requirement is a 35' height maximum. He believes that both limitations should be concurrently binding on individuals developing their properties.

Corpe provided two real-life examples of structures that have abided by either the number of stories or the height in feet: the Punturo house above Scenic Hills and the Moll house in Bay Ridge. Each appears to be at least 3 stories tall, but going by the definition of height in feet for the style of roof employed on the front of the building, coupled with advice from legal counsel, the structures were approved.

Motion by Krause, support by Smith to interpret Section 6.11.1 to require that both the maximum number of stories and the maximum height in feet requirements set forth must be met. The Planning Commission is urged to review the specific language for potential revision. Motion carried unanimously.

- c. **Interpretation under §5.3.2(3), Interpretation, to classify SNOWMOBILE RENTAL BUSINESSES so that the land use conforms to a comparable permitted or prohibited land use, in accordance with the purpose and intent of each district.** (Attachment C included and incorporated by reference): Hull reported that a gentleman asked about opening a snowmobile rental business on property in the B-4 district. Such a use is not specifically described in the ordinance relative to any existing zoning district. The ordinance gives the ZBA the power to classify unlisted uses based on the existing uses and intent of the various zoning districts.

Smith stated that historically, business properties have not been allowed to display their wares outdoors except for used car lots. He believes the only place this use might be appropriate is in the B-4 district. Corpe noted that this is the district where the proposed sites were located. Kuncaitis felt that the potential necessity for outdoor storage of the snowmobiles, perhaps in a fenced area.

Kipley stated that the Crestwood Motel next to his office has advertised the availability of rental snowmobiles and jet skis.

Kuncaitis noted that prior to operating any such business, an applicant would still need to receive SUP/Site Plan review/approval from the Planning Commission and the Board of Trustees. The ZBA would only be determining that the type of use would be allowable in the zoning district.

Motion by Smith, support by Krause that rental of off-road recreational vehicles should be permitted in the B-4, Material Processing and Warehousing district subject as a special use and not as a use by right. Motion carried unanimously.

5. **Other Business:** Hull provided a memo indicating that on March 10 the ZBA will be asked to settle a procedural question related to a development review application submitted by Meijer, Inc for the property they own on the southeast corner of M-72 East and Lautner Road.

Kuncaitis announced that the ZBA customarily elects officers every January.

Motion by Smith, support by Kipley that the current slate of officers remain in place (Kuncaitis as Chair, Belcher as Secretary). Motion carried unanimously.

6. **Approval of minutes from the December 9, 2004 regular meeting.** (Attachment D included and incorporated by reference):

Motion by Krause, support by Kipley to approve the minutes of the December 9, 2004 meeting as presented. Motion carried unanimously.

Meeting adjourned at 8:19 p.m.