

BIRCH RUN TOWNSHIP  
ZONING BOARD OF APPEALS

SPECIAL MEETING

JUNE 28, 2005

Chairperson Bill Nelson called the special meeting to order at 7:00 pm. Also present for the board were Edward Magnus and Dennis Bronner. Absent were Jerry Cook and Mike Hogan. Five people in the audience, which included, Township Attorney David Meyer, Attorney Daniel Rusch for petitioner, owner Matthew Roth, Brian Thomson (Executive Mortgage), and Township resident Dennis Bernecker.

Passed: Motion by Bronner seconded by Magnus to accept the Minutes of June 7, 2005 Special Meeting.

Yeas: Nelson, Bronner & Magnus

Nays: None

The purpose of this meeting is to make an interpretation as guided by Section V (4) of the ZBA request form.

**Public Comment**

Mr. Rusch addressed the Board regarding Mr. Roth's request for Interpretation/Determination.

Mr. Bernecker had no objections to Mr. Roth's request.

Mr. Rusch requested that printed material submitted by him be entered into the record. (See attachment B)

Attorney Rusch asked Mr. Roth series of questions concerning his property and whether he complied with all restrictions set forth in May 23, 2000 variance. Mr. Roth answered that he had complied with all restrictions, and when questioned by ZBA member Ed Magnus, concerning semi truck trailer on his property, Mr. Roth did admit that he did have such trailer parked on site for 3 years.

ZBA member Dennis Bronner talked about former ZBA Variance and the intent of the ZBA at the time the variance was granted.

Mr. Meyer spoke on clarifying the purpose of this meeting.

Mr. Meyer said the ZBA has a specific order in the ordinance not to grant a nonconforming use.

He said we must determine what the ZBA of 2000 meant in the granting of variance.

Does the language in the 2000 variance grant the right to expand or not.

Is it permissible to use the presented documents as the information to determine the interpretation?

If one business moves out can the new use replace the old?

Mr. Rusch requested that ZBA make determination/interpretation on the questions contained in Mr. Roth's request.

Question 1. That the Saginaw County Circuit Court Judgment on Case No. 94-4932-CE-3 did not involve and therefore, did not bind David A. O'Connell or Cheryl L. O'Connell and therefore, did not run with the land when the O'Connells transferred the property to Mr. Roth.

Answer 1. ZBA felt they were not in a position to interpretate Saginaw Circuit Court Judgment #94-4932-CE-3, and that should be done by the Circuit Court.

Question 2. That the Zoning Board of Appeals' actions of May 24,2000, created a variance for Mr. Roth's non-conforming use of the property in accordance with the provisions and limitations of its terms.

Answer 2. ZBA agreed that a variance was given to Mr. Roth with restrictions.

Question 3. That the provision of the May 24, 2000, variance providing "the property must be maintained in a residential manner...i.e., mowed and landscaped" is vague and ambiguous and not subject to violation of a "expansion of an additional business at the facility" as cited by Mr. Setzer as the basis for his denial of the Executive Mortgage business license.

Answer 3. ZBA agreed that Township Zoning Administrator, Mike Setzer's rejection of Mr. Roth's request to expand the use of the property was valid based on the fact that adding any additional business at this site would violate the original intent of the ZBA on May 23, 2000, with regard to restriction #1. The property must be maintained in residential manner i.e., mowed and landscaped. ZBA did not feel they were in a position to determine, as Mr. Rusch had asked, whether this restriction was vague and ambiguous.

The record should reflect that the board is making no determination and will not make a determination on the terms vague and ambiguous from question #3. This was specifically asked for by Mr. Rusch.

Attending members of ZBA agrees that Mr. Meyer was right that determining that if item 3 is true, the following questions are mute.

Question 4. That the provision of the May 24, 2000, variance providing " this variance only applies to perspective purchaser Matthew Roth," does not and cannot limit Mr.

Roth's non-conforming use in light of Section 13.03(A)(3) which provides "a change of tenancy or ownership of a non-conforming use is allowed provided there is no increase in the degree of non-conformance of the non-conforming use" so as to justify denial of the Executive Mortgage license.

Answer 4. ZBA stated that the addition of another business at this site is not a tenant change, but is an expansion of use.

Question 5. That it be determined, contingent upon Mr. Roth's agreement to abide by all limitations of the May 24, 2000, variance, that no violation of the variance and/or Township Zoning ordinances exists under this proposed use.

Answer 5. ZBA felt that any determination of any possible violation by Mr. Roth of the May 23, 2000 variance restriction should be determined by Township Code Enforcement.

Question 6. That, under the Birch Run Township Ordinance #03-02 "Sign and Outdoor Advertising", the proposed use of this property by Executive Mortgage would entitle them to one non-illuminated sign as allowed for in residential R-1 districts described as a free-standing ground sign with a maximum of 32 square feet surface and maximum height of 6 feet.

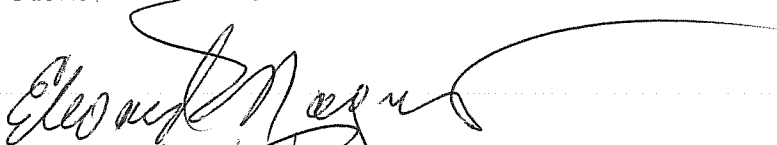
Answer 6. ZBA felt that the addition of Executive Mortgage at this site would not be allowed, and was an expansion of use, and that a sign for Executive Mortgage would also not be allowed.

Question 7. Make such other determinations and rulings that are necessary to effectuate Mr. Roth's intended use of the property by Executive Mortgage in a lawful manner.

Answer 7. ZBA determined that the addition of another business at this site was an expansion of use, which is not allowed.

Further discussion between Mr. Rusch, Mr. Roth and the Zoning Board of Appeal Members continued. All ZBA members agreed that going from one business to two businesses was an expansion. Mr. Bronner explained to Mr. Roth that Mr. Roth knew the property he was buying had problems, and strings attached. He would never have applied for the original variance in 2000 otherwise. Mr. Bronner also stated that he felt the original intent of the May 23, 2000 ZBA was to allow Mr. Roth to conduct his business at this site but also to "soften" the effect on the area with their #1 restriction. "That the property must be maintained in a residential manner, i.e. mowed and landscaped.

Motion by Bronner, Supported by Magnus to adjourn at 9:03pm  
Motion carried 3-0

  
approved 8/10/05