

**CHARTER TOWNSHIP OF PENNFIELD**

**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF MAY 21, 2013**

Chairperson Frank Schumacher called the meeting to order at 6:00 pm in the Pennfield Middle School Cafeteria. Members present were Frank Schumacher, Perry Beard, Chuck Adams, Maryanne Herbstreith, Curtis Whitaker and alternate member Lindsay Draime. A quorum was met.

**Others Present:** Rob Behnke, Township Supervisor and Zoning Administrator; Barbara Darlington, Pennfield Township Deputy Supervisor; Pennfield Township Attorney John Macfarlane, Court Reporter Mary Howland and Pennfield Recording Secretary Sandra Cummings. Representatives from TIA Corporation/ "A Forever Recovery" were attorneys Tom King and Phillip B. Slot, intern Jennifer Dominyue, Executive Director Pam Anderson, and Architech Larry Rizor.

The meeting opened with the Pledge of Allegiance.

**ADDITIONS/DELETIONS TO THE AGENDA**

There were no additions or deletions to the agenda.

**APPROVAL OF MAY 7, 2013 MEETING MINUTES:**

A motion was made by Perry Beard, seconded by Maryanne Herbstreith to approve the meeting minutes from May 7, 2013. Motion carried.

**INTRODUCTIONS/PURPOSE OF PUBLIC HEARING/ RULES**

Supervisor Rob Behnke introduced the Zoning Board of Appeals members along with Township Attorney John Macfarlane and Attorney Tom King. He explained the purpose of the public hearing, and stated that all members of the public who wished to speak should come to the podium, state their name and address, and limit comments to three minutes.

**PUBLIC HEARING CALLED TO ORDER**

The Public Hearing was called to order to hear a use variance request from TIA Corporation/ "A Forever Recovery" pursuant to Section 18.06 C (1) – (3) of the Pennfield Charter Township Zoning Ordinance.

## **PRESENTATION OF REQUEST (TIA CORPORATION/ "A FOREVER RECOVERY")**

Attorney Tom King presented his request to the Zoning Board of Appeals members. He stated that his client, TIA Corporation, wished to construct a new 10,900 square foot dormitory on a parcel of land currently being used as a parking lot for said client, which is located directly across the street from the main building being used as a drug and alcohol rehabilitation facility. The need for this additional dormitory is to provide separate sleeping quarters to the female clients of the facility. He stated that the existing parking lot is never filled to capacity as none of the clients are allowed to have a vehicle on site. A new parking lot is planned on another piece of property adjacent to the existing parking lot, also owned by TIA Corporation. Since parking is allowed within 300 feet of the facility it serves, the relocation of the parking lot would not be a problem. He indicated that since parking requirements are much greater than their needs, the facility would be willing to reduce the size to preserve a larger green buffer for neighboring properties. The clients housed in the new dormitory would cross the street as a group each day to attend classes and activities in the main building.

It is the opinion of Attorney King that since a use variance was already granted to this facility on May 7, 2002, the current request to add a building within the existing boundaries of the property owned by the facility should be considered an extension of the existing variance. His opinion is that by granting the use variance for a non-conforming use, it then becomes a conforming use, and the addition of another building is just a continuation of that use.

Attorney King pointed out that the business has operated in an uninterrupted manner since the original use variance was granted, and that all qualifications met at that time still exist now. He stated that due to the size of the facility and topographic difficulties, it would be unsuitable for residential use, and that the expansion would not alter the character of the neighborhood. He stated that if the variance is granted, the Corporation will comply with all township building and zoning requirements to construct the new dormitory, and would even reduce the size of parking to increase the buffer zone.

## **QUESTIONS FROM THE ZBA BOARD MEMBERS**

Township Attorney John Macfarlane opened this portion of the meeting with the legal opinion that an expansion of a non-conforming use will not be permitted. He did not agree with the statement that by granting a use variance for a non-conforming use, that made it a conforming use. His stand remains that even though it is a lawful use, it is still a non-conforming use and that it is unlawful to permit expansion of a non-conforming use unless permission from the Zoning Board of Appeals is granted.

The Board commented that in the previous appeal process in 2002, the applicant assured the board members that no further enlargement would be made of the physical facility. Mr. King replied that no assurances were given at that time that the facility would never request enlargement. Mr. King stated that the size of the compound would be limited to property that was already owned, and that the proposed dormitory is indeed located within that limited property.

The Board enquired about police and fire responses to the facility, and whether they have increased since 2002. Pam Anderson, Executive Director of "A Forever Recovery", stated that there were very few police and/or fire calls, only a few medical emergency calls, and that there was very little outdoor activity conducted on the premises. She indicated that use of the volleyball court was limited to the hours of 4:00 pm to 7:00 pm, and use of the water for swimming, boating, and fishing was up to 7:00 pm. Sundays were for client visitation, and that the clients were respectful of neighbors. She indicated that the clients were limited to 6 clients on the pontoon boat at a time, and fishing was catch and release only. Clients were allowed to go for walks on the road only when accompanied by a staff member.

The Board asked if clients were forced to stay at the facility, and if anyone had ever escaped. Pam Anderson stated that clients could check out anytime, and would be transported away by staff members. Clients who have left on their own have always been found.

The Board asked about security measures for the facility. Ms. Anderson stated there was ample security staff at all times. She indicated that there were security cameras installed, and that tape recordings were retained for two weeks. The security staff conducts room checks and perimeter checks routinely. The proposed new dormitory would employ 6 staff members.

The Board asked about the safety of pedestrians crossing St. Mary's Lake Road to go to the main building/classrooms. Pam Anderson indicated that pedestrians would only be coming across the street as a group, and that traffic is very slow moving, with a posted speed limit of 15 MPH because the road takes a hard curve at that point.

The Board asked if the facility has support from residents in the area. Mr. King indicated that TIA Corporation has not solicited support from residents.

The Board asked if the business is operating at capacity, and if it is profitable. The Director indicated that the facility at this time has 90 clients, with capacity being 100, and that it is a profitable business.

The Board commented on the fact that TIA Corporation would be willing to reduce the number of parking spaces created in the proposed new parking lot. The Board asked if the reduction would prevent other

businesses from using the facility should the current owners decide to close or sell the facility. It was indicated that a purchaser would need to be aware of the restrictions.

The Board asked how clients are referred to the facility. The Director stated that they have a Website, and receive phone calls, and some referrals from family members and previous clients who have successfully completed the program. Success rate is about 67%. Most clients are from outside the state of Michigan. The clients go through a detoxification procedure prior to arrival at the facility.

The question was posed to Mr. King that if the variance was denied, would TIA continue to operate in the existing facility. Mr. King indicated that it is likely that TIA would continue to operate, but will appeal a denial in court.

The Board asked what changes would be made to the parcel where the new proposed parking lot would be located. It was indicated that part of the proposed parcel is already cleared, with some trees, brush, and brambles. Some of the area will have to be cleared, but TIA would minimize tree removal.

The Board asked what the cost of the new building and parking lot would be. No estimate has been determined at this time.

The Board asked if there had been any state licensing violations at the facility. Pam Anderson stated that there are no violations, and that the Corporation has the highest accreditation that can be received.

Rob Behnke, Township Zoning Administrator, stated for the record that according to the Township Master Plan, the current zoning for the location of this facility is and will be Medium Density Residential.

## **PUBLIC COMMENTS/QUESTIONS**

Michael Wood, 156 St. Mary's Lake Road: property is adjacent to proposed parking lot.

He and his family will be able to see the dorm and parking from his yard. He has small children and states that traffic has greatly increased since 2002, the speed is much faster than 15 MPH, has witnessed clients walking through his yard, fleeing from police, and feels that the character of the neighborhood has already been affected adversely. He is opposed to expanding the rehab center.

Lawrence Grayheck, 201 St. Mary's Lake Road: owns a parcel next to the proposed site. He is Vice President of the St. Mary's Lake Association and liaison member on the committee that is supposed to meet each year with representatives from A Forever Recovery to resolve neighborhood problems. He stated there's has only been two meetings since 2002, and feels there needs to be more. He has heard many complaints from

neighbors regarding the clients. He feels the road can't handle increased traffic, there have been mailboxes hit, a garage was hit, and many people stop him to ask directions to the center. There have been speed bumps installed to slow traffic, and he is concerned for the safety of children waiting for school busses and riding bikes. He complained that the sewer pumping station already smells bad, and increased clients will increase the smell. He stated that the clients on the beach are loud and use foul language which carries and can be heard by children and guests of residents. He feels that the area where clients will be crossing the street from the proposed dorm to the main facility is not a safe place to cross.

Alexis Smith, 204 St. Mary's Lake Road: owns a home adjacent to the main facility. She has two small children, and has many issues including fast traffic, loud music from staff vehicles early in the morning, foul language and loud voices late at night yelling from room to room, clients climbing out the windows of the facility. She stated that the clients keep the fish they catch, and wants to know if they are required to get a fishing license and fish during the proper season as required by law. She indicated she has had to call the Sheriff department, and that the sheriff deputies have difficulty getting cooperation from staff at the facility. She is concerned that there may be registered sex offenders or felons housed at the facility.

Steve Smith, 253 St. Mary's Lake Road: lives next to the main facility. He feels there will be more large trucks such as food and laundry deliveries on the street to service increased clients. He feels extra security in the form of privacy fencing should be constructed all around the facility.

Cindy Vanasperen, 251 St. Mary's Lake Road. She is adamant about the need for privacy fencing also. She had a family member car-jacked and threatened by a client. She has had clients walking through her yard and constantly coming into her yard for stray basketballs. She can't enjoy being outside due to constant foul language from the clients. She has witnessed an overloaded pontoon boat, and has had difficulty identifying security staff from patients so she knows who she is talking to. She requests that the staff wear a different colored shirt so she can address them regarding problems.

Jon Bowers, 198 St. Mary's Lake Road: owns property directly behind and below the proposed building site. An expansion of the facility will directly affect his home. He is concerned about increased delivery trucks and large security lights shining into his yard. He feels there will be major excavating above him for construction of the new building, with increased water run-off coming into his yard.

Brandon Smith, 204 St. Mary's Lake Road. He is concerned about loud radios, bad language, hooting and hollering at night, safety of his children, and the need for criminal background checks on clients. He feels the facility does not extend respect to residents.

Pat Smith, 21151 North Avenue. She uses the lake frequently, and the language she hears from the beach area at the facility is horrible with repeated obscenities. She indicated that one of the staff members went outside during this meeting and smoked on school property. She is concerned that if staff members disobey school laws, they may not be following the rules at the facility either.

Gretchen Saver, 30 Groveland Street. She stated she attended the facility 4 years ago, and completed the program successfully. She stated that lives are saved there, and appreciates that the neighborhood residents have given up their back yards to help save lives.

The issues brought out during the public hearing were addressed by Attorney King. He stated that road conditions and municipal sewer problems were not under the control of

"A Forever Recovery". The issues with water runoff, lighting, and other site plan issues will be dealt with as needed. The facility is willing to have regular meetings with the neighborhood committee and would gladly agree to reducing parking spaces in order to create buffer zones.

Pam Anderson stated that they have invited Lake Association members and neighbors to tour the facility and attend annual picnics, but no one from the public has ever attended. She states that all staff members are accredited, and have college degrees. She stated she always cooperates with the sheriff department. She stated that staff wears uniforms and I.D. tags.

The Director stated that clients enter the center of their own free will, and that no criminals are sent to the facility as part of sentencing requirements. This fact is not a guarantee that a client does not have a criminal record, however, and current HIPA laws prevent revealing personal information about patients. She stated that the facility does not accept clients convicted of sex crimes.

#### **NEW BUSINESS: TIA CORPORATION USE VARIANCE REQUEST**

The public hearing was closed by Chairperson Frank Schumacher. A motion was proposed by Lindsay Draime, offered by Perry Beard, seconded by Chuck Adams to approve the Use Variance request from TIA Corporation/ "A Forever Recovery", to expand the Drug and Alcohol Rehabilitation Facility by constructing an additional building on a parcel owned by the same situated on the existing parking lot, and create a new parking lot on an adjacent parcel owned by the same and located within 300 feet of the main building, under the same conditions on record for the original Use Variance request made May 7, 2002, with additional provisions that security fencing be constructed around the entire facility. The request was denied. A roll-call vote follows:

Chuck Adams No Curtis Whitaker No

Perry Beard No Frank Schumacher No

Maryanne Herbstreith No

### **PUBLIC COMMENTS**

Gary Cantrell, 152 Crane Court, stated that he was opposed to the original approval of a Drug and Alcohol Rehab facility as the neighborhood is a residential area, and that the neighborhood has had to live with it, but objects to allowing any expansion.

Cindy Vanasperen, 251 St. Mary's Lake Road, again stated that security staff does not wear identifying apparel, she lives in their back yard, and should not expand because the facility already has difficulty controlling the existing clients.

### **BOARD MEMBERS COMMENTS**

Chuck Adams stated that he feels the residents were very upset about any proposed expansion of the facility and that a privacy fence should be installed as requested.

Frank Schumacher feels that the facility should follow through with the fencing, and get more easily identifiable uniforms for security staff.

### **ANNOUNCEMENTS**

The next Zoning Board of Appeals meeting is scheduled for May 28, 2013, 6:00 pm, at the Pennfield Charter Township Annex to hear a request from O'Reilly's Auto Parts.

### **ADJOURNMENT**

Perry Beard made a motion, seconded by Chuck Adams to adjourn the meeting at 8:15 pm. Motion carried.

Submitted by,

Sandra Cummings, Recording Secretary