

Sands Zoning Board of Appeals
November 10, 2011

1. Meeting called to order by Chair Nelson at 7:03 p.m.

2. Roll Call: Steve Foulks, Bob Vietzke, Bob Vick, D. Walch, R. Nelson,
J. Winkowski (alternate); Staff: Randy Yelle, Carolyn Kerkela

Public in Attendance: Stan Wittler (applicant), Jim Noe, Jane Noe, Barb Kidder, Jim Kidder,
Nancy Olsen, Larry Peterson, Brian Meravi

3. Agenda: MOTION (Foulks/Vietzke) to approve the agenda; accepted by vote.

4. Minutes: MOTION (Vick/Nelson) to approve the minutes of September 28, 2011. Approved.

Introduction of ZBA alternate – Randy Yelle introduced Jackie Winkowski and ZBA members

Prior to opening the public hearing, ZBA members had several questions about the Sands
Speedway application.

Mr. Foulks began by asking Mr. Wittler questions regarding ownership and whether he was
authorized to act on behalf of all six owners. This will need to be verified by Race Way
Investors, LLC or all owners should sign the application.

MOTION: (Foulks/Vick): Table this request until we get proper documentation that this person
speaks for the LLC.

Chair recognized Mr. Wittler who questioned Mr. Foulks' opposition to the track via the law suit
filed previously. Mr. Wittler believes he filled every request when asking for the variance and
also explained that the owners agreed that majority rules on LLC actions.

Chair Nelson noted the presence of the township's attorney, Mr. Dettmann, who clarified
parliamentary procedure regarding the motion currently on the floor.

Discussion on the motion: pros/cons of moving forward tonight per the motion; ZBA members
noted that minor changes are requested in the application, not rezoning, sale, or other major
changes. Mr. Dettmann recommended that a condition of any action taken is subsequent proof of
Mr. Wittler being the authority to make the request.

**Mr. Foulks, with support from Mr. Vick, withdrew his motion to facilitate further
discussion.**

Concerns with the application were discussed:

- The is a variance application on a non-conforming use property; application is not exactly
right and not complete. Mr. Foulks distributed a document he prepared, "Problems with
the variance petition."

- Question raised about a complete legal description on the application. Mr. Yelle explained that the Tax Code identifies the specific parcel
- Mr. Foulks asked for clarification and elaboration is requested for items in the application
 - Cover grandstand – what is planned and what does this entail?
 - Items 2 and 5 – move concessions and old beer building; the hand drawn picture with the application does not show dimensions or details
 - Items 4 & 8 (billboards and portable bleachers) – what is being added and what size are these items?
 - Items 6 & 7 – remodel observation deck on bathroom building and repave track – what do these actions entail?
 - Item 9 – clear trees from motocross track – seems most problematic for residents

Mr. Wittler explained that item 9 refers to a location (motocross track) that is used as an ATV safety training area. No motocross racing is planned at this time.

Mr. Yelle explained that application items 6, 7, 9, and 10 don't require action by the board, and that the Zoning Administrator can approve those without approval of ZBA. However, Mr. Yelle has the option to bring such items to the board and elected to do so in this case.

Chair Nelson indicated that there is such a history on this property that these owners don't know what they can or cannot do. They are trying to do things the proper way; they have rights to do things on the property (refer to ruling by Judge Quinnell). There are some things that can be done without needing action.

Board members agreed that the brevity of explanations raised questions. Mr. Wittler said he was told that anything done above ground needs a variance. A lot of this request was to find out what they can and can't do. Mr. Wittler offered explanations for items requested.

- Billboards would use 4x8 sheet of plywood; how much depends on number of sponsors; Common sense comes into play, and it may help block noise. Won't be blocking view of spectators – that doesn't make sense. He asked if Sands has any requirements for billboards, etc. that must be adhered to? No, and this is the first time the board has had a variance on a non-conforming use.

Board members discussed the concept of maintenance versus change in context of a non-conforming use property. Ms. Walch suggested going through each item individually to determine the items which do not require ZBA approval and those which should stay within the application.

Mr. Vietzke said a more detailed site plan would be helpful and that some of the changes may require building permits. Noise is a concern, but the court ruling allows the operation, and while a non-conforming use is aimed at failure, if its operational, anything for safety and noise reduction could be beneficial. Even covering the grandstand could be a good thing if it deflects noise, but could also be a bad thing if noise becomes worse.

Mr. Dettmann asked if he could weigh in to help. He explained that when you have a non-conforming use you want to make it go away, but you can't let it go away any faster than it would. The Board can open the discussion of what is repair versus enlargement; he advised that

you have what you have and to work within constraints. A non-conforming use is set to eventually retire and not be there anymore; it could be rezoned but it is a non-conforming use and eventually there will not be a race track there.

Chair Nelson suggested that perhaps rezoning should be considered to make the activity appropriate within the zoning; owners and township should work to minimize problems.

Mr. Wittler said their group bought the track, and with the non-conforming status, are unaware of the specifics and are trying to find out what they can do.

Mr. Nelson stated that there is only one non-conforming use in the township so there is no clear guidance based on practice.

Mr. Dettmann clarified the definition: any change in the nature or size of the use constitutes an extension of the non-conforming use. He noted that the way the non-conforming use is administered can still allow extension and enlargements because power is delegated to ZBA.

Ms. Walch asked if a rezoning bid fails, does the non-conforming use continue? Yes. She also asked about the time frame for this application and whether the intent was to do any of the work this year. Mr. Wittler said no, it's late in the season and the application reflects a longer range plan.

Additional discussion centered on revising the application, prioritizing the projects, and providing details for the items being requested.

MOTION (Foulks) to table the application; Motion did not receive a second to support.

5. Open Public Forum – at 8:43 p.m. by Chair Nelson.

Input Opposed:

Jim Noe – track was litigated by township, citizens; neighborhood has expanded to 15 to 20 houses. Now ZBA is talking about letting race track expand, how you can do this when we don't know what they're talking about doing. If allowed to expand, it becomes a worse nuisance. ZBA has authority to make changes but it will end up in court as they'll not allow property to be degraded. Township's job is to represent and protect. This is a non-conforming use, it was non-conforming use before buying it, they [owners] had no idea what they bought. Track wasn't intended by township or zoning. Cutting trees is a problem – they are the best defense against noise. They've already expanded the track: were three concrete pads there and now there are ten; graveled pits – that's fine, but they've put on additional concrete, so there are many things going on. It's all about helping guys who bought this thing – don't allow it to expand and become bigger nuisance.

Barbara Kidder – read letter sent to board (attached to minutes). Question: the beer building -- what has it been used for, being moved where, and why...what is the intention? Don't believe Racines had a liquor license. Also ask to have on record that she did realize that about not having motocross Stan Wittler said "at this time," but how will motocross be kept out?

Nancy Olsen – letter on file. Glad that ZBA is talking about making specifics included in the request; the way the application is worded, she had questions about what is meant (e.g. relocating, remodeling). No concern about some items, but many items she did have concerns about. What will prevent another request down the road; if they are successful in their business – more and more requests will come down the line. Several of us who have put time and money into having restrictions on that track don't look forward to having to go that route. Noise is a concern, and even if you don't object to it, many people do. Keep to non-conforming use and they'll be able to run their business according to guidelines.

Jim Kidder – if trees are removed can you require them to completely fence the property to keep motocross riders out off the track?

Chair Nelson answered that they can't run motocross at that location. There is one place that can be done and it is across the street.

Input in support

Brian Meravi – He is behind the race track and what the owners have done is very good. There are lots of people that do enjoy racing at Sands Speedway and have no issues with what is proposed to make it a better place for everyone. Crowds have quadrupled and its only on Saturday.

Stan Wittler – I'm listening to what people don't like and can agree with 85% of it. All of the track owners are racers and they do everything in their power to keep noise down, within reason, trying to be good neighbors. The judge did not state the track was a nuisance.

6. CLOSE Public hearing: 8:58 p.m. by Chair Nelson.

MOTION: (Walch/Nelson) That Item 6 to repave track as long as it remains unchanged; Item 9, to clear trees with the understanding that it is not to allow motocross; and Item 10 to rebuild perimeter fence with no change to fence size be removed from variance application and referred to zoning administrator. Aye: 4 Abstain: S. Foulks

MOTION: (Nelson/Vick) Table the variance application, with the remaining 7 items, until the next regular ZBA meeting. Aye: 5 Nay: 0

Public comment:

Question: What would happen if trees are cleared and people start to run motocross? Mr. Yelle stated that would be a zoning violation.

Will letters submitted regarding the application be included in proceedings? Yes

10. Unfinished business – none

11. New Business

- a. Appointment of new officers

MOTION: (Foulks/Vietzke) All officers stay same. Aye: 5 Nay: 0

- b. Set 2012 meeting dates and starting time

MOTION: (Walch/Foulks) – Schedule four (4) meetings in the coming year on the 2nd Thursday of month as follows: February 9, May 10, August 9 &

November 8, 2012. Time: 1900 hours

Aye: 5 Nay: 0

12. Public comment – Mr. Wittler thanked the board for putting up with them as rookies in this process. Thanks for the input and they will put things together for the February 9, 2012 meeting.

13. Close public comment.

14. Chair Nelson adjourned the meeting at 9:24 pm.