

MEMORANDUM

TO: Elk Rapids Township Planning Commission

FROM: Larry Nix, PCP
Andy Moore, AICP

DATE: May 18, 2015

RE: **Special Exception Use Review – Pine Hollow Institute (10400 S Bayshore Dr)**



Mr. Dale Hull has requested that his application for Special Exception use for the operation of Pine Hollow Institute (PHI) be un-tabled and reconsidered for approval by the Planning Commission. As you recall, this application was considered by the Planning Commission in June 2014 and was tabled until a number of issues were clarified by the applicant. According to the minutes of the June 2014 minutes, the applicant was to “present a better, more detailed business plan including descriptions of activities, address the comments and concerns made at the meeting, detailed plan for fire and rescue issues, and an application for rezoning approval.”

In the fall of 2014, the Township rezoned the subject parcel and several around it from R-3 to R-1. If you recall, the subject property was split-zoned between R-1 and R-3. The proposed use is only permitted as a special exception use in the R-1 district. With the rezoning now approved and in effect, the entire property can be considered for the proposed use and the application can proceed.

The applicant has now prepared and submitted the following information:

- A letter and project narrative
- A letter from the Antrim County Building Department
- A log of activities from PHI since December 2013
- Correspondence between PHI and the Elk Rapids Fire Department
- A revised site plan sketch
- A statement of financial position
- Letters of support from PHI clients.

We have reviewed the previous special exception use application, site plan, and additional materials submitted in 2015 by Mr. Dale Hull of the PHI. The purpose of this memorandum is to provide the Planning Commission with our thoughts relative to the materials submitted and a recommended course of action.

Activities During 2014

We are troubled by the fact that the applicant used the property as a group retreat, ostensibly without receiving approval from the Township, Elk Rapids Fire Department or Antrim County Building Department, in 2014. In the application narrative, the applicant claims that in 2014, PHI hosted 1,702 people for some part of a single day and 472 overnight guests. Further, the activity log submitted by the applicant indicates that more than a dozen retreats were held, which included overnight accommodations, throughout the year. This includes times that the application was before the Planning Commission.

This is a significant problem and a violation of several sections of the Zoning Ordinance, and possibly other building and fire codes along with other applicable laws. In the Zoning Ordinance, it appears that the applicant has been in violation the following Sections:

1. **Section 2.01**, which provides that “Except and as hereinafter specified, no building structure, premises, or piece and parcel of land in and throughout the Township shall hereafter be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged, or altered, **except in conformity with the regulations and provisions herein specified** for the zone in which it is located.” The applicant has not complied with all regulations of the Zoning Ordinance.
2. **Section 7.06**, which provides that “A Group Retreat Center is **only permitted as a Special Exception Use** in the R-1 Zone.” The applicant has not been granted special exception use approval.
3. **Section 17.02**, which provides that “...**the zoning administrator shall not issue a permit** for any construction or uses until a site plan, submitted in accordance with this section, shall have been reviewed and approved by the Planning Commission.” The applicant has received no such approval from the Planning Commission.
4. **Section 19.04**, which provides that “**It shall be unlawful to use or permit the use of any structure or premises** hereafter altered, extended or erected, until the Zoning Administrator shall have made an inspection of the premises and signed a Certificate of Occupancy.” To our knowledge a certificate of occupancy has not been issued for the proposed use of the facility as a group retreat center.
5. **Section 19.04**, which provides “a process for dealing with a special exception use application” and further providing that “Special Exception Uses require special consideration in relation to the welfare of adjacent properties and to the community as a whole.” The applicant opted to operate a special exception use without going through the process and receiving approval pursuant to the standards of Section 19.07. Based on the fact that he submitted an application in 2014 to use the property as a group retreat, it is reasonable to assume that this was an intentional violation of the Township Zoning Ordinance.

Section 19.09(A) of the Zoning Ordinance establishes that “any building, structure or use constructed, altered, moved or maintained in violation of the provisions of this Ordinance is hereby declared to be a nuisance per se. **The Township Board may institute proceedings in an appropriate court to enjoin, abate and remove said nuisance.**”

Section 19.09 (B) of the Zoning Ordinance sets forth penalties for the violations. This section includes the provisions that reads “**Every day that violation is permitted to exist shall constitute a separate offense.**”

Using the statistics provided by the applicant claiming that PHI accommodated 472 overnight guests, and further assuming that each overnight guest accommodation constitutes a violation of each of the five sections outlined above, we note that the applicant has been in violation of the Ordinance dozens, if not hundreds, of times in 2014 alone.

The Township issued a zoning violation notice to Pine Hollow Institute in April 2015. There are several ramifications to this violation notice which need to be worked out by the attorneys.

Application Information and Background.

The Pine Hollow Institute (PHI) has proposed to use its property located at 10400 S Bayshore Drive for a Group Retreat. The subject property is zoned R-1. The applicant is proposing to establish the proposed group retreat in the existing house located on the property; no new structures or other site alterations are proposed. Section 7.06 of the Zoning Ordinance permits group retreats in the R-1 district as a Special Exception Use.

Site Plan Review

We offer the following comments for the Planning Commission’s considerations relative to the requirements of Article VII of the Zoning Ordinance.

Dimensional Requirements. We find that the proposed parcel and use meets all required setback, lot coverage and dwelling area requirements. We cannot verify the height of the existing house, and dimensions are not illustrated on the site plan. However, if the house is nonconforming in this respect it may be approved since no additions or enlargements are proposed.

Signage. Section 7.06, A, 4 permits one un-illuminated sign not exceeding six square feet in area. The applicant stated during the 2014 review that signage complies with Township standards and submitted a picture of a sign. The sign is not scaled so we cannot verify the area, and signage is not addressed in the most recent submittal. This should be confirmed by the applicant, and the applicant should submit a scaled drawing of the sign to verify compliance with the Ordinance.

Parking. The Zoning Ordinance requires one space per employee plus an additional one space per each three guests. The applicant's most recent submittal indicates that a total of 38 spaces would be provided, with an additional 4 spaces possible depending on fire department requirements.

The 2014 submission materials indicated that the retreat will employ four people, although it appears that additional employees may be added. The applicant also indicates that at times, as many as 100 guests may use the facility for one-day events, and up to 24 may use the retreat for several days at a time. The applicant has indicated in its 2015 submittal that PHI will not allow more than 38 cars to park on its property in order to maintain proper emergency access. Thus, the Planning Commission may find that parking proposed is generally sufficient for uses except for the larger one-day events.

Lighting. The applicant has indicates that there are lights installed on the site near all the buildings and the tennis courts. Applicant materials indicate that all lighting is downward facing. We find the lighting to be acceptable.

Special Exception Use Review Criteria

Section 19.07, F, 4 a-g of the Zoning Ordinance contains specific standards that the Planning Commission must find are met before a special exception use can be approved. Those standards, along with our comments, are as follows:

a. The application is consistent with the adopted Elk Rapids Township Master Plan.

The subject property is located within the low-density and high-density residential future land use designations, with the main building located in the low-density designation. A goal of the Master Plan is "the practical protection of those lands that serve as habitat for wildlife and provide extraordinary open space and lake views for residents." Furthermore, the Plan also indicates that "Resource conservation and natural resource-based recreational uses are also encouraged and subdividing the parcel for additional single family home sites would be allowed under the current zoning ordinance, but would not be as supportive of this master plan goal as does the proposed use. In addition, environmentally friendly agricultural activities that do not permanently and negatively modify the natural landscape of the area may be encouraged." The Planning Commission may find that the proposed group retreat meets those criteria, and therefore, find that this standard is met.

b. The project is designed, constructed, operated and maintained to be consistent with the existing character of the general vicinity and such use will not change the essential character of the area in which it is proposed.

The applicant is not proposing any changes to the site. The existing house is located far enough from all adjacent properties and the street that it is unlikely that it will have

a noticeable impact on the character of the general vicinity. The Planning Commission may find that this standard is met.

- c. **The proposed use is not hazardous to existing or planned uses in the same general vicinity and in the community as a whole.**

Given its isolation from adjacent properties, it is unlikely that the proposed use would constitute a hazard to existing or future uses. The Planning Commission may find that this standard is met.

- d. **The proposed facility is served adequately by essential public facilities and services, such as highways, streets, police and fire protection, storm water drainage, refuse disposal, water and sewage facilities, and schools; or persons or agencies responsible for the establishment of the proposed use shall provide adequately for such services.**

The parcel and building meet applicable regulations in the Zoning Ordinances. The review and approval of applicable reviewing agencies, such as the County Health Department, Elk Rapids Fire Department, and others may be addressed as a condition of approval.

- e. **The proposed use does not create excessive additional requirements at public cost for facilities and services and will not be detrimental to the economic welfare of the community.**

The proposed use will likely have a negligible impact on public facilities, and may have a positive impact on the local economy due to the addition of several jobs. Retreat attendees will also use other Township services going to and returning from the property, which will enhance the economic welfare of the community. The Planning Commission may find that this standard is met.

The proposed activity does not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any property or general welfare by reason of excessive production of traffic, noise, vibration, smoke, toxic emissions, fumes, glare, or odors.

The proposed use involves activities typical of group retreats, and given the relative isolation of the existing house from surrounding properties, the possibilities of such detrimental impacts seem remote. The Planning Commission may find that this standard is met.

- f. **The proposed use shall meet the intent and purpose of the Zoning Ordinance; be related to the standards established in the Ordinance for the land use or activity under consideration; and will be in compliance with these standards**

The intent of the Zoning Ordinance is to “promote the health, safety and welfare of the inhabitants of the Township by:

- A. “Promoting the orderly development of the Township.
- B. “Encouraging the use of land and resources in the Township in accordance with their suitability.
- C. “Promoting the economic progress of the Township and to protect and enhance the property values thereof.
- D. “Reducing the hazards to life and property, promoting safety in traffic and providing protection from the spread of fire and other hazards.
- E. “Conserving the use of public funds for public improvement and services to conform with the most advantageous use of lands, properties and resources of the Township.”

We believe that the proposed facility meets each of these statements, and therefore, the Planning Commission may also find that this standard is met.

Recommendation

At the May 20, 2015 meeting, the Planning Commission should carefully consider the comments from the applicant, the public and others as appropriate. Based on the information submitted, we recommend the Planning Commission take no action on the proposed Special Exception Use for Pine Hollow Institute and until the following issues are addressed:

1. Submission of a more detailed site plan illustrating dimensions of roadways, parking areas, structures, and other important features of the site to be approved by the Zoning Administrator, Elk Rapids Fire Department and Antrim County Building Department. In other words, the applicant needs to make adjustments to the site plan reflecting the changes that will be required by the departments noted above.
2. PHI signs a settlement agreement with the Township in which it agrees to pay the Township for past violations of the Zoning Ordinance, and agrees to the other terms and conditions as the Township special attorney and Township Board require.

Once an updated site plan has been submitted to the Planning Commission noting the information above, the Pine Hollow Institute special exception use may be considered for approval. The approval should be in the form of a motion that finds the Special Exception Use standards of Section 19.07, F, as detailed in this memorandum, are met. The motion of approval should also contain the following conditions, in addition to any others deemed necessary by the Planning Commission:

1. Events on the property cannot exceed the number of parking spaces available to staff and guests. With only 38 spaces available and a staff of 4 this leaves only 34 parking spaces for guests. The Zoning Ordinance requires 1 parking space per 3 guests, this equates to limiting guests to 102 for any event on the property. If events are planned to accommodate more than 102 guests, the applicant shall notify the Township Zoning Administrator at

least two weeks prior to the event and submit a plan to address how the increase in parking demand will be handled to ensure the health, safety and welfare of guests and the public. In no event shall parking be permitted for this facility on the public road adjacent to PHI.

2. Perpetual compliance with the standards of Section 7.06 of the Zoning Ordinance.
3. Acquisition and submission of all applicable permits to the Township Zoning Administrator. Specifically, the Fire Department and Antrim County Building Department must issue approval permits prior to the Township issuing a final Special Exception Permit for the PHI facility.
4. The special exception use shall be reviewed by the Zoning Administrator at least every three years to ensure compliance with the Zoning Ordinance. Such reviews shall include a site visit and may be conducted more frequently if deemed necessary by the Planning Commission or if complaints are received by the Township.
5. This special exception use will run with the property until revoked by the Township for non-compliance or violation of the Zoning Ordinance or the conditions placed on the approval, or if the property owner desires to terminate the Special Exception Use Permit. In any event, this owner or any future owners shall be bound by and must comply with all the Zoning Ordinance provisions applicable to a Group Retreat Center, and this approval.
6. Overnight retreats shall be limited to no more than 24 retreats in a calendar year and shall not be conducted more than 3 times in any calendar month.
7. The barn building and associated kitchen facility or any other accessory or temporary structure or shelter shall not be used in association with any aspect of the Group Retreat Center operation. Specifically, the barn building and associated kitchen facility shall not be used to prepare, serve or in any way serve meals to guests or visitors associated with the Group Retreat Center. Any and all meals shall be served in the main building.
8. The PHI shall establish an escrow pursuant to Section 19.08.B.1 of the zoning ordinance of sufficient size to cover the cost of the Township Planner's review and the Township special attorney's review.
9. Others as deemed appropriate by the Planning Commission.