

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING  
APPROVED MINUTES – MAY 11, 2009**

**CALL TO ORDER**

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on May 11, 2009, at 7:30 p.m., at the Tyrone Township Hall.

**ROLL CALL**

Present: Commissioners Greg Carnes, David Cypher, Debi Smulsky, Claudette Moyski, and Mark Meisel

Guests: Julius and Penelope Sobonya, and Jim Soldan

**MINUTES OF JANUARY 5, 2009, ZONING BOARD OF APPEALS MEETING**

Moyski moved that the minutes of the January 5, 2009, Zoning Board of Appeals Meeting be approved as presented. (Smulsky seconded). The motion carried.

**READING OF THE PUBLIC NOTICE**

The Zoning Board of Appeals Recording Secretary read aloud the public notice for tonight's meeting, which was published in the April 26, 2009, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on April 22, 2009, at 9:00 A.M.

**VARIANCE REQUEST**

- #1 Greg Duberg, RE: Request for a Variance from the Paving Requirement to Allow a Gravel Driveway and Parking Area for a Paint Ball Facility, Located on Vacant Property on the Southwest Corner of White Lake Road and Old US-23, (TAX CODE # 4704-04-300-006), Which was Rezoned on April 7, 2009, from RE and M1 to B2 – Community Business. Also, a Variance Request for a Reduced Fence Height Along the Easterly Portion of the Property.

Jim Soldan, a business partner of Greg Duberg, requested a variance from the paving requirement to allow a gravel driveway and parking area for a Paint Ball Facility and a variance for a reduced fence height along the easterly portion of the property. He stated that in regards to the driveway request it would be placed on virgin property that has never been touched and close to an existing pond. He continued that they put stone on the property about a year ago and have pounded it down to get it stabilized before putting in an official hard surface. He stated the Tyrone Township Planning Commission has only granted them a temporary permit/probation. He continued that a driveway and parking lot would cost approximately \$75,000.00. He stated that if the business does not do well, they will be stuck with a blacktop driveway to nowhere. He continued that if the business does well a permanent driveway would be possible. In regards to the variance request for a reduced fence height, Mr. Soldan stated the fence area in question is on the east side of the property. He continued the Zoning Ordinance requires a 6 foot fence height around the facility. He stated there is a 7 foot fence along the Schupbach property (4704-04-300-014). He stated they are erecting a 6 foot fence around the rest of the facility, except for the easterly portion of the property. He explained the reduced fence height is needed to allow deer ingress/egress to the property and eliminate forcing them to enter/exit the property on White Lake Road. He added that there are a lot of deer on this parcel of property and it is heavily wooded where the reduced fence would be located. He stated he

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would put in a 6 foot fence if the Board decides they must put in a 6 foot fence. He continued that 6 foot gates would be at the entrance to the facility and they will be locked when the facility is not open for business. He stated paint ball is not played in the dark or when it is cold out, only 45 degrees and above. He continued the season typically runs from April thru October. He stated the facility would have open play on Saturdays and Sundays only and that play during the week is by appointment only. He continued that drugs and alcohol are strictly prohibited. He stated there are no coast to coast formal rules, but this is a heavily regulated sport. He continued that if the rules are not followed the person will be thrown out without a refund of money. He stated that the games are short – approximately 15 to 20 minutes in the speed ball area and an hour in the woods area. He continued that the paint used is water soluble and the paint will be unique to their facility. At this time, Mr. Soldan gave an overview of the property to show the setbacks, the different playing fields and gave some background information regarding the games.

**COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS**

In response to Smulsky's question, Mr. Soldan responded that this is not a franchise facility. In response to Carnes' question, Mr. Soldan answered that there are referees for each game and game areas. In response to Smulsky's question, Mr. Soldan responded that referees are trained and the rules will be posted at the facility. In response to Smulsky's question, Mr. Soldan answered that 16 foot mesh netting would be used to separate the playing fields and that the chances of paint going out of the area are extremely slim. He added that the paint balls will only travel 250 feet at most and that the cemetery is 800 feet from the property line. In response to Smulsky's question, Mr. Soldan responded that the participants wear full face gear, long sleeve shirts, long pants and should not have exposed skin. In response to Smulsky's question, Mr. Soldan answered it was his and Mr. Duberg's idea to allow ingress/egress for the deer by having a reduced fence height along the easterly portion of the property. Meisel added the issue came up when Mr. Soldan came before the Planning Commission and together they determined it would be more reasonable to have an ingress/egress area along the easterly portion of the property, rather than have the deer ingress/egress on White Lake Road. In response to Cypher's question, Mr. Soldan showed the Board where the paint ball activity would be on the property, via a map of the property on the overhead projector. In response to Carnes' question, Mr. Soldan answered that there would be a 50 foot setback around the entire property. In response to Cypher's question, Mr. Soldan responded that the property would be marked with yellow ribbon or construction tape. In response to Cypher's question, Mr. Soldan answered that beyond the ribbon would be considered out of bounds. In response to Cypher's question, Mr. Soldan responded that the driveway would consist of a minimum of 5 inch base of crushed concrete with asphalt to possibly follow. In response to Cypher's question, Mr. Soldan answered that he did not think dust would be a problem for the facility or the surrounding neighbors. He continued that this is pretty damp property. Cypher stated that he has a concern for dust control because all the adjoining properties are going to get dusted whenever someone drives in or out of the facility. Cypher suggested the applicant put asphalt millings over the crushed concrete, which would give a smoother drive and cut down on the dust. Mr. Soldan replied that they do not want to create problems and if dust becomes a problem they will do whatever it takes to eliminate the problem. In response to Cypher's question, Meisel answered that the temporary office could be a trailer according to the Zoning Ordinance. Meisel added

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that the Planning Commission gave them a temporary permit for the paintball facility with two provisions: 1) They have to go before the Planning Commission before the season begins next year to review any problems, complaints or concerns and address any issues (dust, noise, stray paint balls or trespassing); and 2) This is a temporary use and the special land use permit the Planning Commission recommended the Township Board approve requires that after the allotted time period the use would either become permanent or they would need to ask for an extension to the temporary use permit. Meisel continued that this could be successful and if it is, the driveway would need to be made more permanent and meet the driveway requirements under the Zoning Ordinance. He stated there are no driveway standards in the Zoning Ordinance for seasonal use or low intensity use. Meisel added that if this is not successful, it would be easier to remove crushed concrete rather than asphalt. He added that if asphalt is added at a later date, surface water discharge will need to be managed. At this time, the Board reviewed the submitted drawings showing the requirements for the asphalt drive and parking area. Meisel stated the applicant has up to 4 years to determine if the business is successful, with a review before the Planning Commission thereafter for either a permanent use or an extension of the temporary use. Mr. Soldan stated if the business is successful they will asphalt the driveway and parking area. In response to Carnes' question, Meisel answered this is a one year probationary period with a maximum 4 year use on a temporary basis before they have to come back and establish a more permanent use. Carnes stated that Mr. Schupbach has a nice fence along the property. Meisel stated the paintball facility will utilize the Schupbach fence so there is not a double fence there. Carnes stated he spoke with Mr. Schupbach and found out that his fence is several feet from his property line. Meisel stated the Board believes this to be the case but cannot completely substantiate it. He continued the Planning Commission imposed upon the applicant that should Mr. Schupbach remove the fence, the applicant will need to put in a fence to replace it. Meisel stated the fence is intended to keep people out when the facility is closed. In response to Moyski's question, Meisel answered that a variance granted should be conditional upon a duration of time not to exceed the temporary land use permit issuance recommended by the Planning Commission and approved by the Board. Carnes recommended the Board make two separate motions rather than one motion for the variance requests. In response to Cypher's question, Meisel answered the applicant received approval for port-a-johns by the Livingston County Health Department and a schedule for cleaning them, and emptying of a dumpster for trash, were conditions of the special land use approval. Cypher stated a concern for sanitary conditions and having enough port-a-johns to accommodate the amount of people visiting the facility per week. He also stated a concern for the health issues as well as smell issues during the hot summer months. Meisel stated the applicant agreed to make sure they were cleaned as necessary and the applicant met the requirements of the Health Department. (A lengthy discussion ensued regarding health and safety issues in regards to the port-a-johns and patrons not using them and using the woods instead. It was determined this was a Planning Commission issue).

**PUBLIC COMMENT**

The Board reviewed written correspondence from Julius and Penelope Sobonya, 6309 Mabley Hill Road, (Tax Code # 4704-34-402-026), indicating they are against the variance requests for the paintball facility. Penelope Sobonya, 6309 Mabley Hill stated they were not notified for all the Planning Commission meetings regarding the paint ball

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facility. Meisel noted they did receive written notice for the Planning Commission public hearing and the meeting (ZBA) as required by statute. She expressed concerns for the cemetery, the fence and dust. Both Penelope and Julius Sobonya stated they would be in favor of granting the variances requested for a 4 year period, since they would be reviewed for any problems or issues after a year by the Planning Commission.

**MOTION**

Moyski moved to grant the variance request by Greg Duberg for a reduced fence height of 4 feet, (which is the approximate height of the existing fence), along the easterly portion of the property, for a period not to exceed the restrictions placed on the property by the Tyrone Township Planning Commission which is a four year probationary period, for a Paint Ball Facility, located on vacant property on the southwest corner of White Lake Road and Old US-23, (TAX CODE # 4704-04-300-006). The variance request meets all the criteria (Unreasonable Burden, Substantial Justice, Minimum Variance Required, Extraordinary Circumstances, and Health and Safety) which are needed in order for a variance to be granted. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 22.05.F.5 (Fencing)]. (Cypher seconded.) Roll call vote: Smulsky, yes; Cypher, yes; Moyski, yes; Meisel, yes; Carnes, yes. The motion carried.

**MOTION**

Meisel moved to grant the variance request of Greg Duberg, for property located at 10260 White Lake Road, tax code 4704-04-300-006, for a deferral of the requirement to pave the drive and parking lot due to the following findings of fact: Unreasonable Burden: As noted by the suggestion of the Planning Commission that the applicant may wish to seek a variance for this matter, the zoning ordinance does not provide for a deviation from the paved drive and parking requirements set forth in Section 25.02.B as a result of the type of use, intensity of use, or use duration. The applicant has been granted a special land use permit for an outdoor recreation use not to exceed 4 years without additional approvals. The requirement to install permanent access drive and parking surfaces is inconsistent with the temporary use and may adversely impact a future use for the property. Substantial Justice: The appellant seeks to provide access drive and parking consistent with the type of use and the project's temporary use. The public may benefit from the absence of a large asphalt surface which would increase runoff and contamination inflow into Runyan Creek. Minimum Variance Required: The minimum variance required is being granted. Extraordinary Circumstances: The zoning ordinance does not differentiate between permanent or temporary uses, nor the type of use when establishing the paved access drive and parking requirements. The special land use permit issued to the appellant is temporary and involves outdoor recreation in a natural, wooded environment. The requirement for paved access and parking would appear to be unnecessary based on the type of use, duration of use, and location of the use. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. The granting of this variance is conditional on providing adequate dust control, to be enforced by the Zoning Administrator. This variance will run concurrently with the Planning Commission's issuance of the temporary land use permit, for a period not to exceed 4 years. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 25.02.B (Off Street Parking Space Layout, Standards, Construction and Maintenance - Paving Requirement)]. ( Moyski seconded.) Roll call vote: Smulsky, yes; Meisel, yes; Moyski, yes; Carnes, yes; Cypher, no. The motion carried.

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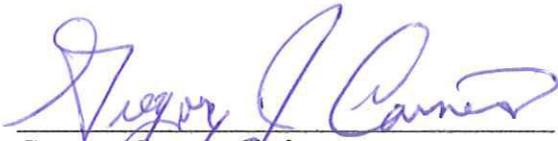
**MISCELLANEOUS BUSINESS**

The Zoning Board of Appeals bylaws require the election of officers at the regular meeting in April of each year. Gregory Carnes was elected as Chairperson. David Cypher was elected as Vice Chairperson.

The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, June 1, 2009 at 7:30 p.m.

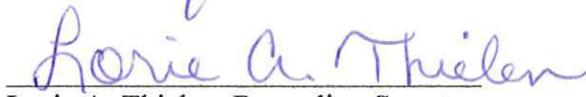
**ADJOURNMENT**

The meeting ended at 9:18 p.m.



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Gregory Carnes, Chairman  
Tyrone Township Zoning Board of Appeals



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Lorie A. Thielen, Recording Secretary  
Tyrone Township Zoning Board of Appeals

c File  
Tyrone Township Clerk  
Tyrone Township Zoning Administrator  
Tyrone Township Zoning Board of Appeals Commissioners