

**CHARTER TOWNSHIP OF YPSILANTI
ZONING BOARD OF APPEALS
Wednesday, September 7, 2022
6:30 pm**

COMMISSIONERS PRESENT

Marsha Kraycir – Chair
Jimmie Wilson
Edward Burnett

STAFF AND CONSULTANTS

Jason Iacoangeli, Planning Director
Amy Steffens, Planning and Development Coordinator
Dennis McLain, Township attorney

i. CALL TO ORDER/ESTABLISH QUORUM

MOTION: Ms. Kraycir called the meeting to order at 6:30 pm.

ii. APPROVAL OF AGENDA

MOTION: Mr. Wilson **MOVED** to approve the agenda as presented. The **MOTION** was **SECONDED** by Mr. Burnett and **PASSED** by unanimous consent.

iii. APPROVAL OF JULY 6, 2022 REGULAR MEETING MINUTES

MOTION: Mr. Wilson **MOVED** to approve the previous Board Meeting Minutes as presented. The **MOTION** was **SECONDED** by Mr. Burnett and **PASSED** by unanimous consent.

iv. PUBLIC HEARINGS

a) ZBA 2022-0006

Applicant: LynxDx, Inc. Steven Riggs

Location: 2515 Ellsworth Rd, Ypsilanti MI 48198

Parcel ID: K-11-18-100-013

Request: Request for an extension to a temporary use approved by the Zoning Board of Appeals on March 2, 2022 to allow for a temporary outdoor Covid-19 testing drive-thru clinic per Section 1704.4.B. of the township zoning ordinance

Mr. Iacoangeli, the Township Planning Director, presented the request for an extension of the temporary use permit for the COVID testing facility located at 2515 Ellsworth Road for an additional period to expire on December 16, 2022. The LynxDX COVID testing facility has been at 2515 Ellsworth Road for the last six months.

Mr. Iacoangeli presented the staff report:

- The six months granted previously is the limit for temporary uses and developed portions of the township.
- The extension of the temporary use for an additional 100 days would set a precedent for temporary uses within the township, especially those that are located within commercial districts, such as this location on Ellsworth.
- COVID testing facility should be tied to an appropriate primary use such as a civic building, church or health care facilities.
- These land uses are directly tied to community outreach and play a role as the anchors for communities in times of emergency due to natural disasters and public health emergencies.
- The Planning Department opinion if the COVID facility could relocate to one of the Civic oriented uses that would become an accessory use and stop being a temporary use. It would allow the facility to not be bound by the 6-month time period.
- LynxDx currently has a COVID testing facility operation at 2/42 Church in Scio Township, which has been in operation for over a year.
- The township has provided LynxDx with alternative locations within the township that would be more suitable for this use, including the New Covenant Missionary Baptist Church located at 2345 Tyler Road. This church has been utilized in the past by the Washtenaw County Health Department for COVID-19 and flu vaccination clinics.
- The township is aware that the property owners are actively marketing the property for sale to prospective developers, and that a potential purchase agreement has been put in place for the Walmart building.
- The empty Walmart store front and parking lot add to the distress of the overall Roundtree shopping plaza and the addition of a temporary COVID testing facility in the parking lot adds to the overall perception of this property being underutilized which affects the neighboring businesses and property owners.
- Reviewing the lease or concession agreement for the use of the property if the “area becomes unavailable for use as intended” by LynxDX then they “shall be permitted to terminate this Agreement without penalty or premium upon five days advanced written notice to OSP”. This clause in the agreement would allow LynxDX to move from the site without accruing financial penalties for breaking the terms of the lease.

The Planning Department is recommending that the Zoning Board of Appeals deny the request for LynxDX an additional 100 days of temporary use to expire on December 16 2022. The need to remain in the location for a time period of more than six months per the ordinance requirements is a self-created hardship. Other viable, more suitable areas of the township are available for the testing facility to relocate.

Ms. Kraycir inquired if there were suitable locations available from the current location; Mr. Iacoangeli explained that according to the ordinance the usage is for temporary purposes. But when it is attached to appropriate primary use like a church, civic building, community center or a hospital, it would be considered as an accessory use. The accessory standards in the township zoning ordinance don't require time limits. LynxDX can get zoning approval through the planning department and be permitted to continue as long as they're continuing to be an accessory use to the community.

Ms. Kraycir inquired if moved to a different location, would it be defined as an accessory use; Mr. Iacoangeli clarified that it would.

Ms. Kraycir questioned Mr. McLain (Township attorney) on his concerns about extending the ordinance that was requested; Mr. McLean stated that under the ordinance, permanent, temporary buildings and use for periods not to exceed two years and undeveloped sections of the township and for periods not to exceed six months in developed sections.

Mr. Burnett inquired why LynxDX is not moving to a better location:

Ken Disney (Director of Operations: LynxDX) highlighted the following:

- LynxDX has been operating at 2515 Ellsworth Road for the past six months.
- Provided over 15,000 COVID tests to the community, the majority being from 48197 and 48198 zip codes.
- LynxDX lease at that site is until January 1, 2023. The operation would like to stay at that site based on the lease.
- Moving the operation to a new location would take time, effort and cost.
- LynxDX is providing service to the community and works closely with the health department in following all regulations.
- The funding for the at home test has ended and LynxDX does not charge the community. LynxDX is insurance based or free based testing. LynxDX would like to continue to provide this service for the Ypsilanti township residents.
- A letter was sent to the Board stating LynxDX intention was to get the extension time in order to set up a new location. 2515 Ellsworth Road is a centralized location for residents. It is easily accessible and can process 1000 individuals a day without disrupting any traffic.

Mr. Wilson inquired with Mr. Disney that the present lease does allow LynxDX to terminate without penalty upon five days' notice and whether the township has offered any locations; Mr.

Disney responded that there is a 30-day notice, but even with the 30-day period, it would still take time to find a location (permits, contract, paperwork) and there would be a down period between the closing and opening of the new site, and that can be avoided. The township has offered a location at a church (zip code: 4197), this location was used for past services. Setting up a new location with a drive-through facility would take time.

Ms. Kraycir inquired about the equipment used; Mr. Disney shared about the trailer container and the generator that's been used. Both these require heavy machinery for the move.

Ms. Kraycir pointed out that in the first meeting with the organization LynxDX had stated that they wouldn't require an extension; Mr. Disney stated that he was unaware and there had been a change in leadership.

Ms. Kraycir inquired when LynxDX received information about the church being a potential location for the operation and if there had been any communication with the church; Mr. Disney stated that he received the information about the church a month ago and there has not been any communication with them since that would be dependent on the outcome from the Board. Mr. Disney added on to say that the new proposed site would not be profitable.

Mr. Disney stated that LynxDX provides service to the community. With this move it could possibly put that location into the negative and what the revenue is month to month. The church that was provided was not an agreeable location because it was not centralized to the population but on the outskirts of Ypsilanti. Any downtrend and testing coming through the site would not be viable to stay open.

The clinic is on an appointment basis and walk-in is welcome. The facility handles 120 – 150 patients a day. It takes about 3 to 5 minutes to complete the process for registration.

Ms. Kraycir clarified on the status of the lease, based on five days' notice, LynxDX can remove themselves from the present facility and location without any penalty; Mr. Disney stated that he would need to verify that with the legal team.

Mr. Wilson inquired with Mr. Iacoangeli about the application for accessory use, whether it would come back to the ZBA or it can be done administratively at the planning department; Mr. Iacoangeli reminded the Board that the township found out about LynxDX testing facility through the newspaper, because there was no paperwork filed at the time that it was established. The township granted six months for temporary use, which is the maximum under the ordinance to allow it at the site. The township is in full support of a testing facility, but it needs to be located at a civic location (school, church, hospital). The present location is on a commercial site, and it is valid only for 6 months. The recommendation is to move to a place in the township that is an accessory use since it provides the time as needed because the Planning department can use the zoning ordinance for longer duration.

The planning department stated that the present location wasn't a place that they had any input. Agreeing to this would be going against the zoning ordinance and this would set precedence to future decisions made by the ZBA.

Mr. Iacoangeli informed the ZBA that in order for the accessory use LynxDX has to fill in a one-page zoning verification application to be submitted along with documentation and they don't have to go through another ZBA meeting.

Mr. Iacoangeli informed the ZBA that LynxDX has understood that the township wants an alternative location, LynxDX has requested the ability to stay until December in order to meet the obligations of their lease and be given the facility to find a suitable place to relocate.

Ms. Kraycir opened the public hearing at 7:02 pm.

Ms. Kraycir closed the public hearing at 7:04 pm.

MOTION: Mr. Wilson **MOVED** to deny the temporary use permit application to permit the operation of a COVID-19 Drive-Thru Testing Facility located at 2515 Ellsworth Rd, parcel K-11-18-100-013 for a period of one hundred (100) days due to the reasons stated in the staff report. The **MOTION** was **SECONDED** by Mr. Burnett and **PASSED** by unanimous consent.

b) ZBA 2022-0007

Applicant: Josh Angle

Location: 1435 Blossom

Parcel ID: K-11-01-236-053

Request: Request to permit a six-foot tall privacy fence in the required front yard along Wiard Road (maximum four-foot-tall ornamental fence permitted, Section 1305.2).

Mr. Iacoangeli, the Township Planning Director, presented the request to permit a six-foot-tall privacy fence in a required front yard along Wiard Road, where a maximum of a four-foot-tall ornamental fence would be permitted. The subject parcel is about 0.22 acres, zoned in the R-5 single family residential district. It contains a 1400 square foot home on the property.

The six-foot tall privacy fence, installed without a fence permit, is in the required front yard setback along the Wiard Road right-of-way and is not set back from the right-of-way by the required 20 feet. Only a four-foot-tall ornamental fence would be permitted in this location.

On June 30, 2022 the applicant submitted a permit application for the installation of the fence and reconstruction of a driveway. On July 1, 2022 the staff sent the property owner an email asking that additional information be submitted regarding the location of the fence on the property boundaries but no further contact was had from the applicant.

1435 Blossom is a through lot with right-of-way along two parallel sides: Blossom Avenue to the north and Wiard Road to the south. The front door of the house is at Blossom address and the backyard is on Wiard Road. This lot is treated for having two front yards because it fronts on two public streets.

The applicant is requesting a six-foot privacy fence to have the privacy and enjoyment of a rear yard, whereby treated as a front yard by the ordinance where only a four-foot fence would be permitted. This situation would have been problematic if there was a house on the Wiard Road facing the parcel, but it faces Green Oaks golf course.

Analysis:

- That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties or classes of uses in the same zoning district.
- Single family dwellings typically have a customary and recognizable private rear yard. On a standard interior lot, that is a lot that is neither a through or corner lot, the ordinance would allow for the entire rear yard to be encompassed by a six-foot tall privacy fence.
- In the case of a through lot, however, the entire rear yard is not permitted to be fenced with a privacy fence. Any type of fence other than a four-foot-tall ornamental fence must meet the front yard setback from the secondary right-of-way.
- The subject site is a platted through lot in a high-density residential district. This parcel, like the adjacent parcels to the east and west along Blossom, benefits from an additional 38 feet of rear yard along Wiard Road that was combined with this lot from a metes and parcel.
- Wiard Road has a 90-foot right-of-way, with a single traveled lane in each direction. Staff finds that there's exceptional and extraordinary circumstances applying to this property. The subject site is burdened by two rights of way. But the 90-foot-wide road right of way to the south abuts the golf course that would mitigate any negative impact of a six-foot privacy fence in the required front yard.
- Variance is necessary for the preservation and enjoyment of substantial property.
- While an argument against a six-foot tall privacy fence immediately adjacent to the traveled roadway is strong, staff believes that the subject site under consideration deserves some relief from the ordinance because of the 90-foot right-of-way of Wiard Road that is likely not to be widened and the fact that the property immediately south of the site is being used as a golf course.
- Allowing the full rear yard of the subject site to be encompassed by a six-foot tall fence privacy fence furthers the enjoyment of a substantial property.
- Authorizing such variance will not be a substantial detriment to adjacent property, if approved, the fence in the proposed location is not likely to be a substantial detriment to adjacent properties, be harmful to the essential character of the area, or materially impair the purposes of the ordinance or public interest.

- Additionally, the fence would need to be removed from the intersection of the driveway and Wiard Road right-of-way to comply with Sections 1202, Corner clearance, and 1305(3), Vision clearance, thereby mitigating any visual impediments imposed by the fence.
- The applicant did install the fence without benefit of a permit, the ZBA must determine whether or not a condition of the property itself presents a practical difficulty not created by the applicant. As stated previously, the subject site is a thorough lot in a high-density residential district, adjacent to a wide right-of-way, and adjacent to a golf course.
- The proposed variance will be the minimum necessary and no variance shall be granted where a different solution not requiring a variance would be possible. A compliant, four-foot-tall fence could be erected, in the location where a six-foot tall fence has been installed, by right without the need for variance approval.

Mr. Wilson inquired that if the motion gets approved, the applicant would need to pull the official permit and the process would need to be followed; Mr. Iacoangeli stated yes.

Mr. Burnett inquired whether there is any future development for the golf course; Mr. Iacoangeli stated that it is township owned property.

Mr. Iacoangeli informed the Board that the applicant applied for a permit for the driveway. And the fence was tied to that permit. The planning department sent a reply email asking for additional information with regard to the boundary lines for the fence. The applicant did not response to the mail, and later the fence was erected without finalizing that portion of the permit. Later, the applicant stated there was confusion and they assumed that when the driveway was approved, the fence was approved too. And that's the reason they went ahead and erected it.

Amy Steffens, the Planning and Development Coordinator, informed the Board that the driveway permit and fence permit were not issued. Since there was no response from the July 1, 2022 email. Code Enforcement went out and saw that the fence had been erected and when the code enforcement officer made contact with the homeowner. The homeowner was under the impression that he had applied and was told at the counter that everything looked good. He thought he had his permit, but there was none issued and he did not have a permit in hand. After the discussion, the applicant submitted a ZBA application, after which a permit for the driveway was issued until the resolution of the fence was sorted.

Josh Angle (1435 Blossom), the applicant apologized to the Board that he was under the impression with the driveway permit, it also included the fence. He also stated that he was unaware that the front yard was also the backyard, and he also apologized for missing out on the email.

Josh Angle informed the Board that every house on Blossom faces the same direction and they all back up to the golf course and that should not block anybody's enjoyment of the area. There are about nine houses on Blossom Street that are in the same situation because everything else has a field between it or some barrier.

MOTION: Mr. Wilson **MOVED** the variance request to permit a six-foot tall privacy fence in the required front yard along Wiard Road (maximum four-foot-tall ornamental fence permitted, Section 1305.2) at 1435 Blossom Avenue (Parcel K-11-01-236-053) with the following condition(s):

- The fence shall be brought into compliance with Sections 1202 and 1305.

Mr. Wilson stated that due to the exceptional and extraordinary circumstances laid out in the staff report that the property has, he is moving to approve.

The **MOTION** was **SECONDED** by Mr. Burnett and **PASSED** by unanimous consent.

v. **OPEN DISCUSSION FOR ISSUES NOT ON THE AGENDA**

a. **Planning Department report:** Mr. Iacoangeli informed the Board that they have received an application for October for a variance for a new home construction on a parcel that is zoned multiple family. There is time left for people to submit applications for the October meeting.

b. **Correspondence received:** None

c. **Zoning Board of Appeals members:** None

d. **Members of the audience and public:** None

vi. **OTHER BUSINESS**

None

vii. **ADJOURNMENT**

MOTION: Ms. Kraycir **MOVED** to adjourn at 7:30 pm. The **MOTION** was **SECONDED** by Mr. Wilson and **PASSED** by unanimous consent.

Respectfully Submitted by: Minutes Services