



Wexford Joint Planning Commission

% Cherry Grove Township
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October 13, 2017

STAFF REPORT/SITE PLAN REVIEW

1. Application

Applicant's Agent:	Harry Luzius, Professional Engineer
Owner:	Jerry Perry
Owner Address:	7864 S. 1 ½ Rd Harrietta, MI 49638
Site Address, Contact Information, And Proposed Location	7892 S. M-37 Hwy Wellston, MI 49689 Parcel ID# 2112-07-4301 – South Branch Township
Zoned:	Split Zoned C-1 and R R, Approximately 10 acres Commercial, 10 Acres Rural Residential
Site Plan:	Attached (Exhibit A)

2. Development Proposal

- 2.1 Property Description – The property is located in Section 7, South Branch Township, at the NW Corner of M-37 and M-55. The property is approximately 20.2 acres, or 879,790 square feet. Assessment Role Description reads: Part of SE ¼ Desc as Com at S ¼ Post of Sec; N Alg N-S ¼ Ln 132.04 ft to N Ln of Hwy M-55 and POB: N 1189.59 Ft; E 491 ft to W'ly Ln of Hwy M-37; S23D02'04" E Alg Ln 1152.58 ft S34D06'34" W Alg Clear Vision Area Hwy R/W Ln 164.43 ft to N line of Hwy M-55; W Alg SD N Ln 819.72 ft to POB. 19.81 A. M/L SB. Sec. 7 T21N R12W.
- 2.2 Action Report – The Applicant(s) is renewing their request for approval for the different usages of the buildings, which include a canoe livery, convenience store, car museum and sports bar/restaurant. Also, a Special Use Permit is being sought on the Rural-Residential area of the property for the application for a Mud Bog with accessory buildings and parking. Ancillary building, part of the Mud Bog usage is to be built on the Rural-Residential section of the property. Also, overflow parking for the Mud Bog is mainly on the Rural-Residential section of the property. They have added future uses of a baseball

field and extensive parking for over 500 vehicles, including over 30 ADA parking places. They have added a large section of stands for spectators on the southwest side of the Mud Bog. Much extensive lighting has been added to the Site Plan.

2.3 Background:

1. This property started under the Wexford County Zoning back in August of 2016, when Jerry Perry applied for a Zoning Permit on 8/10/2016 from Wexford County Zoning for a proposed "Mercantile/Storage" pole building. It was approved by Karen Selim on 8/15/2016.
2. A "Phased Approval" for a building permit was given by the Wexford County Building Department on 8/31/2016 by Bob Scarbrough for a "Mixed Use: Non-separated M, S1 Mercantile & Storage. The full building permit was issued on 12/27/2016 by the same entity.
3. Driveway permits were applied for and received from MDOT on 8/9/2016 for driveways off of M-37 and M-55.
4. Septic and Well permits were obtained by the District Health Department on 8/11/2016.
5. Since that time the Applicant's Agent, Dan Miller has been using the temporary trailer on the property as a commercial enterprise with customers coming in and out of temporary trailer renting canoes from Mr. Miller's "River Rat Canoe Rental."
6. It should be noted that while a phased approval for a building permit was issued, there were no reviews regarding the impact of the uses on the land, such as is required under the current zoning ordinance.

2.4 Current Narrative:

1. A letter was mailed to Amy and Jerry Perry at their residence in Hamilton, Michigan on 4/6/2017 by the Wexford Joint Planning and Zoning Administrator when it was determined that the owner was actively continuing to excavate, clear the land, and promote land uses which were not approved through the appropriate permitting process.
2. Acting on complaint and discovery that the work progress at the corner of M-37 and M-55 was continuing in a non-licensed fashion, a STOP WORK order was given to the Applicant on 5/26/2016 at the Agent's place of business there, after consultation with the Wexford Joint Commission Attorney of Record.
3. Application was made on behalf of Jerry Perry by his Agent Dan Miller on 6/7/2017 for a "Site Plan Review" on the property at the NW corner of M-55 and M-37. Their \$660 was paid at that time.
4. On that same date, 6/7/2017, a Memorandum was given and gone through with the Agent, Mr. Miller concerning Zoning Principles of having a Mud Bog in this jurisdiction. Also, there was a list of questions which were helps for their consideration of having an outdoor activity with potentially hundreds of individuals on the property, considering the noise of the engines for the Mud Bog, the lighting for the property and other considerations for them to contemplate.

5. In the initial review process, the Zoning Administrator realized the property was located in two different zoning districts, Commercial and Rural-Residential. The ZA advised the Applicant's Agent that the more stringent use standards would apply. Consequently, on June 21, the applicant's agent paid the amount due for consideration of a special land use.
6. A follow-up letter was written to the Owners, Jerry and Amy Perry on 6/23/2017, praising them for the "significant progress" made with their Agent, Mr. Miller. This letter also cancelled the site plan review which was scheduled for 6/26/2017 by the Wexford Joint Planning Commission because of their lack of a scaled site plan.
7. A new scaled site plan was received by the Zoning Administrator on 6/27/2017 by Engineer H. Luzius which showed the site plan in its entirety. Working with the Mr. Luzius, a new site plan was made which showed the proper zoning areas for the parcel. The mercantile/storage building and the Mud Bog pit with proper outdoor portapotties are all located within the Commercial Zone. The 30' x 40' Agriculture and Equipment storage building would be located in the Rural-Residential area of the parcel.

NOTE: The above described Site Plan was reviewed and approved, and the Special Use was approved with conditions (after a proper public hearing) at the regular meeting of the Wexford Joint Planning Commission on July 24, 2017. Shortly afterwards it was discovered by the Assistant Zoning Administrator (while personally delivering the list of conditions related to the Special Use request) that work was proceeding in violation of the approved Site Plan and Special Use conditions. This visit was documented in a report of August 19th: PERRY PROPERTY SITE VISIT. On August 23rd a STOP WORK ORDER was personally delivered to the subject property by the Planning and Zoning Administrator in a brief meeting with Mr. Dan Miller and Harry Luzius, Professional Engineer. The property owner was notified in writing via US Mail on August 25, 2017.
8. It was decided by the Applicant to submit a NEW application regarding the subject property. According to the Applicant's 'new' application and 'usage' description, all of the usages requested on the Commercially zoned portion of the parcel are permitted under section 5502.E. and 5502.N in the North American Industry Classification System (NAICS sector 44-45). Also, under NAICS sector 71, Arts, Entertainment and Recreation, such an activity as Mud Bogs is now subject to Special Use approval in the Rural Residential zones listed in Article 37, Section 3703.G, as well as site plan review standards by the Planning Commission.
9. Agent Dan Miller informed WJPC office that he has been removed from being the Agent for Jerry Perry the first week of September, 2017.
10. Since mid-September, various meetings have taken place since then with the new apparent Agent, Harry Luzius, Professional Engineer and Site Plan Developer for this project. We are still awaiting a signed letter of Agency for Mr. Luzius from Mr. Perry. Mr. Luzius has been notified of this letter several times.

11. Mr. Luzius meet with Staff on Wednesday, September 27, with a new Site Plan drawing and payment of the ‘**after the fact permit multiplier**’¹ for **Special Use approval and Site Plan Review** for the Planning Commission. Staff reviewed the Site Plan in detail for completeness and provided Mr. Luzius a written list (Wednesday, October 4th) of corrections and additions that would need to be added to the Site Plan and Narrative they have provided us, in order to be deemed complete.
12. Mr. Luzius presented a new Site Plan and narrative regarding the Special Use request on Wednesday, October 11th intended to address the concerns presented to him on Wednesday, October 4th. An additional staff review of the newly submitted information found that the Site Plan was now complete and contained all elements required by the zoning ordinance.

2.5 Wexford Fact Book Notation:

1. On page 239 of the Wexford Fact Book it states that the places in Wexford County which are more rural intersections known as “Hamlet’s,” such as “Gartlett Corners” at the corner of M-55 and M-37, are viewed as different Commercial properties than those of a city like Cadillac, or a town like Mesick. According to the Master Plan, these “Hamlet’s” are to be supporting Commercial enterprises to those larger Commercial towns and cities. Therefore, Commercial activities like Gasoline stations and other small businesses are warranted in these rural intersections.

3. Standards for Site Plan Review with Staff Comments and Recommendations

3.1 According to WJZO Article 9411 – The following standards shall be used by the Planning Commission to review site plans.

1. Does the site plan show “all applicable regulations of this Ordinance” both “generally to all districts,” and apply to this “specific zoning district” (C and/or R-R)? (Refers to page 141 WJZO 9411.A)

The Planning and Zoning Administrator has determined that the following sections from Article 10 apply to this Site Plan:

- A. **WJZO Section 1004.H – Storm Water Run-off.** *The Site Plan shows the proposed storm water run-off from the commercial building impervious surface parking area into three detention pond areas surrounding the building’s parking lot. All other water retention on the property flows northwest and will be absorbed into the soil.*
- B. **WJZO Section 1020.A – Junk Accumulation.** *The applicant has not proposed the storage of any vehicles (Mud-Bog, Demolition, etc.). There will naturally be vehicles associated with the operation of the seasonal canoe livery and the other*

¹ Increased cost to reflect recovery of costs for enforcement actions, additional inspections, notices, consultation with an attorney for purposes of handling a land use project that was started and underway prior to obtaining a zoning permit.

proposed permitted uses. As this is a high traffic intersection of two State of Michigan highways, appearance is paramount. It should be assured by the applicant that the vehicles, canoes, trailers, and any equipment associated with the canoe livery be stored and maintained in a neat fashion. It should be noted that the canoes and equipment are currently being stored in what is proposed as detention pond areas.

- C. **WJZO Section 1050 – Driveway Design.** *Both driveways, off M-37 and M-55 are properly positioned and placed with proper drainage and elevation as per requirements in this section.*
- D. **WJZO Section 1051 – Driveway and Curb Cuts.** *All eight (8) qualifications in this section have been met by the Applicant and is incorporated in the Site Plan.*
- E. **WJZO Section 1053 – Traffic Visibility at Corners.** *The proper steps have been taken, as per the Site Plan, to comply with proper visibility at the very busy corner of M-55 and M-37. There is nothing in this section that would interfere with the visibility that drivers experience from either M-55 or M-37.*
- F. **WJZO Section 1054 – Vehicular Parking Space, Access and Lighting.** *The Site Plan shows 453 parking spaces and 30 ADA spaces. Overflow parking will be directed to the R-R section north of the Commercial building. The Ordinance states that Arts, Entertainment and Recreation [71] shall have “One (1) parking space for every four (4) seats of legal capacity (or six feet of bleachers).” The amount of spaces shown would allow for 1,932 visitors to the event. **Staff Recommendation** – Should the event start drawing over 2,500, causing an extra 125 parking spaces, the Planning Commission should direct that the applicant must present a new parking plan within the confines of the subject property (or other property) to be approved by the Planning and Zoning Administrator. This will assure visitors are not parking along M-37 or M-55, or in the space to be provided for the Traffic Visibility at the corner of M-37 and M-55, or along 1 ½ Road.*
- G. **WJZO Section 1060 – Signs.** *There is an existing billboard noted on the Site Plan. Note: Section 1062.B.4 states that “free standing signs shall incorporate low-level landscaping at its base.” No other free-standing signage is proposed on the Site Plan. The Ordinance does allow in Commercial Districts “up to six each no larger than 50 square feet in area,” with a total sign area allowed of “up to 160 square feet in area, 20 percent of the wall area, nor 20 percent of the height of the side of the building, whichever is greater.” Maximum height of a sign is the “maximum height of the building in that zoning district, or 25 feet, whichever is less.” Signs could be “mounted, ground, pole, wall, rooftop, or portable.” **Staff Recommendation** – The applicant should be directed to install the requisite landscaping at the base of the existing billboard. Should the applicant desire any additional signage, he should be directed to submit the proper permit application and fees to the Planning and Zoning office for review.*
- H. **WJZO Section 1061 – Outside Lights.** *Proper lighting is shown on the Site Plan, with lights on proper poles or attached to Commercial building. The Site Plan shows the types of lighting and lumens proper to parking lighting. This conforms with this Section of the Ordinance, A.1-5, and specifically, A.1.a-d. Specific lighting is noted in Applicant’s Narrative and shown on the Site Plan.*

- I. **WJZO Section 1062 – Landscaping Standards.** *Note: Section 1062.B.4 states that “free standing signs shall incorporate low-level landscaping at its base.” Also, Section 1062.E. The Site Plan shows keeping most of the existing vegetation on the property, for example, 10 and 20-foot trees. Also, landscaping is shown around the perimeter of the berm, consisting of coniferous trees, approximately 20 feet apart, throughout the R-R zoned area. Landscaping is consistent with this section of the Ordinance. **Staff Recommendation** – all existing vegetation, such as trees, as shown on the site plan shall not be removed unless they pose a danger on-site.*

Staff Comment and Recommendations: *The site plan shows all building structures and setbacks are in compliance in both the Commercial area and the Rural Residential area. The Applicant has shown in detail the proper lighting as per WJZO Article 1054.E, which states: “Any light source in or around parking lot shall be shaded so there is not a direct line of sight to the filament, or light bulb from anywhere off the parking area. The area to be illuminated shall be directed toward the parking area and pedestrian walks between the parking area and principle use. Lighting shall be low intensity to avoid light cast, glare, or illumination beyond the parking area.” Also, the parking notated on the Site Plan is on now mainly in the Commercial portion of the land. The Applicant has also demonstrated compliance with Section 1061 regulating outside lighting on and around the main building.*

2. Have “all utility easements” been “distributed on site in a manner which is least harmful to surrounding properties?” And, are all “electric, telephone, and coaxial cable and other lines” to be located (if not already located) underground? (Refers to page 141 WJZO 9411.B)

Staff Comments and Recommendations: *Staff Exhibit B shows the telephone lines from Acentek are all cabled and underground. There are overhead electrical lines near the southern property line parallel to M-55. All other utility lines are currently buried underground that come to the property. Staff Recommends approval of Site Plan in the area of utility easements.*

3. Are all “water lines, sewer lines,” and “all provisions of surface water drainage” approved by respective agencies?

Staff Comments and Recommendations: *Both driveway permits are noted on the site plan, obtained from the MDOT. Both Septic and Well permits were obtained by the District Health Department #10 (Septic - #83-4549, Well - #83-4550). A Soil Erosion and Sedimentation Control Permit was issued by Wexford County. Also, notice the “Drainage Flow Direction” is noted on the Site Plan. The Site Plan is complete when it comes to drainage flow and the direction of it. (Note: Applicant Narrative states they are awaiting the Wexford Road Commission signing off on the driveway entrance off of 1 ½ Road.) Surface Water Drainage is all in place on the Site Plan, especially proper drainage for water run-off on the surface of the parking lot flowing away from the building. **Staff Recommends** approval of Site Plan in this regard.*

Recommendation #1 – Approval of the Site Plan

“The Planning and Zoning Administrators recommend the Planning Commission approve the Site Plan as it is currently expressed. We find the current Site Plan complete and transparent concerning the existing structures and proposed future structures.”

4. Standards for Special Use Permit with Staff Comments and Recommendations

- 4.1 According to WJZO Article 8609 – The following standards shall be used by the Planning Commission to review Special Use Permits.

(Note: This is concerning the R-R portion of the parcel which has the 30’x40’ current Open-Air Event Pavilion building, the proposed additional Open-Air Event Pavilion, and the Mud Bog.)

1. Is the use reasonable and designed to protect the health, safety, and welfare of the community? (Refers to page 131, Section 8609.A.1)

*Staff Comment and Recommendations: The berm around the property is to protect the noise level and the sight of the facilities to the public. Most of the berm is on the R-R portion of the property. The current building(s) are designated as “Open-Air Event Pavilion(s)” to be utilized by the permitted use of the R-R property’s Mud Bog as a stage. The Mud Bog, which takes also takes place on the R-R portion of the property, has protective barriers on three sides of it as noted on the Site Plan. **Staff Recommends** safety recommendations from a security firm or the Wexford County Sheriff’s office in order to protect the safety and welfare of those in attendance to these uses on the property. Staff Recommends the for safety and welfare of the public, especially children, that the Security Recommendations be adhered to at every public event held on the grounds.*

2. Is the use consistent with the intent and purpose of the district? (Refers to page 131, Section 8609.A.2)

*Staff Comment and Recommendations: According to Article 3701, the purpose of the R-R District is “to provide for neighborhoods of a rural character with a mix of forestry practices, agricultural practices, residential uses, resort-residential uses of a same or similar kind or nature, and to implement the Master Plan; while at the same time discouraging retail, manufacturing, wholesale, service businesses, etc. and other major institutional or community services.” Staff **notes** that the current “Open-Air Pavilion” is used as part of the Arts and Entertainment portion of the Mud Bog. Because of the nature of the property before us, all buildings in the R-R section must be ancillary to the Mud Bog, or other Entertainment/Sports Events, on the property. **Staff Recommends** approval.*

3. Is the use compatible with adjacent land uses? (Refers to page 131, Section 8609.A.3.)

*Staff Comment and Recommendations: There is a gasoline station directly across M-37 and a future potential campground directly across M-55. The uses on this property would be consistent and compatible with these Commercial enterprises. **Recommend** that this property's uses would act in harmony with the surrounding businesses. For example: the campers in the campground could use the entertainment activities at the Mud Bog, and those automobiles which use the parking lots can use the gasoline station across the road to fill up. Note: The Applicant has taken measures to insure compatibility trying to mitigate noise and traffic with the berm. They have received proper driveway permitting from MDOT. And no outside agencies have taken any steps either.*

4. Is the use designed to ensure that the public services and facilities are capable of accommodating increased loads caused by the land use or activity? (Refers to page 131, Section 8609.A.4.)

Staff Comments and Recommendations: With the driveways where they are placed, and the parking being in the Commercial area, the side driveway on M-55 can be utilized along with the 1 ½ Road driveway, the increased loads of the land use will be minimal. Being surrounded by a rural area in nature and having proper permitting, nothing seems to be an issue with any outside agencies.

5. Does the use comply with other general and specific standards in section 1601 of this ordinance, the respective district, and general provisions of this ordinance? (Refers to page 131, Section 8609.A.5.)

*Staff Comment and Recommendations: There is nothing in section 1601 that would pertain to this Special Use. The Zoning Staff has reviewed all applicable general provisions and have the following **Recommendations**:*

- **Temporary building(s)**, although generally not addressed, the temporary buildings should not be permitted during the site plan review and should be removed from the property within 60 days of receiving Certificate of Occupancy.
- **Signage**: Although not significantly reviewed on the site plan, the Applicant shall provide documentation demonstrating compliance with section 1060 of the Zoning Ordinance as applicable.
- Although not specifically addressed, the proposed uses will **generate waste** that will need to be removed from the property on a regular basis. The location and screening of the **waste receptacles** should be demonstrated on the site plan or in supplemental materials presented to the Zoning Administrator.

Recommendation #2 – Approval of the Special Use

“The Zoning Administrators recommend the Special Use Permit be approved by the Planning Commission as is suggested above.”

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert Hall". The signature is fluid and cursive, with the first name "Robert" and last name "Hall" clearly distinguishable.

Robert A. Hall, Planning and Zoning Administrator

cc: Perry V2 file