



May 29, 2020

Rebekah Milito
7351 12th Ave.
Jenison, MI 49428

RE: Determination of the use of indoor pool for ISR (infant swimming resource) lessons as home occupation or a commercial business at 7351 12th Ave.

Dear Rebekah Milito,

On September 19, 2019 a building permit was issued for the construction of a 1,920 square foot building attached to the existing 1,275 square foot house at 7351 12th Ave. and for the construction of a 20 by 40 foot pool inside the building.

Although the proposal notes that you contacted the Township about the construction of the pool and addition to the house, there is no evidence of any conversation or approvals for the commercial use of swimming classes. The Township has no records of an application containing a request for a commercial use on the site or for a home occupation for swimming lessons to occur in the pool. No such request was found to be noted on the building permit application or any other application. The Township has no record of any approval being granted for commercial swimming lessons to occur at the site or for a home occupation for swimming lessons.

In response to multiple complaints from neighbors, on Wednesday, May 27, 2020 the Township Code Enforcement Officer and the Building Inspector visited the site and discovered that the pool was being used for commercial swimming lessons without final building or zoning approval being issued. Further, they found many people inside the building addition and more in the swimming pool. They also saw multiple vehicles parked at the site, including in the front yard and across the street at the Township Park. They witnessed loud noises coming from the building clearly audible outside of the building.

During a discussion they had with you, the homeowner, direction was given to cease the use of the pool for swimming lessons unless approval was granted by the Township and, further, to cease **any** use of the building or pool until final building and zoning approval was issued.

On May 27, 2020 after having a phone conversation with you, I emailed a letter to you with a determination that the use of commercial swimming lessons at your site did not comply with the standards in the Zoning Ordinance for a home occupation. The letter contained detailed reasons why the use would not be determined to be a home occupation as stipulated in the Zoning Ordinance.

On May 28, 2020, we had another phone conversation and you emailed me a letter explaining the swimming lessons you provide as ISR (infant swimming resource) lessons. You provided more details including the information that the lessons only last for ten minutes and parents and grandparents may come to watch. You provided a proposal to have only one instructor in the water at a time, to stagger the lessons, and to only use the first 11.5 feet of the pool. You asked for the Township to review your proposal.

After reviewing the proposal again, I found the following relative to considering the use as a home occupation or allowing the commercial use of swimming lessons.

1. Consideration of allowing the use of swimming lessons as a commercial use in the (LDR) Low Density Residential District:

- a. Relevant Zoning Ordinance sections. The site is located in the (LDR) Low Density Residential zoning district.

Sec. 2.21 COMMERCIAL.

This term relates to the use of property in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise or personal services or the maintenance of service offices or recreation or amusement enterprise or garage/basement sales operating more than twelve days during any one twelve month period.

Chapter 8 – LDR – LOW DENSITY RESIDENTIAL.

Sec. 8.2 PERMITTED USES.

Land and/or buildings in this District may be used for the following purposes by right:

- (A) Detached single-family dwellings.
- (B) Public parks, playgrounds, playfields and other public uses of an open space recreational character.
- (C) Family Day Care Homes.
- (D) Accessory buildings and uses as defined in Chapter II.
- (E) Customary Home Occupations as defined in Chapter II, Section 2.47.
- (F) Adult Foster Care Family Home. (revised 5-24-04)
- (G) Foster Family Home. (revised 5-24-04)
- (H) State Licensed Residential Family Facility. (revised 5-24-04)

Sec. 8.3 USES REQUIRING SPECIAL LAND USE APPROVAL.

The following uses may be permitted by obtaining Special Land Use Approval when all applicable standards as cited in Chapter XX are met.

- (A) Churches.
- (B) Municipal buildings not requiring outdoor storage of materials or vehicles.
- (C) Public utility or service buildings not requiring outdoor storage of materials.
- (D) Hospitals, clinics, convalescent homes, and housing for the elderly but not institutions for mentally retarded, epileptic, drug or alcoholic patients or correctional institutions of any type.
- (E) Group Day Care Homes.
- (F) Private non-commercial recreation.
- (G) Golf courses or country clubs.
- (H) K-12 schools, provided such schools are not operated as commercial enterprises.

- (I) Cemeteries.
- (J) The growing and harvesting of crops for resale, provided that this shall exclude the raising of animals and the retail sale of products on the premises, except for roadside stands, and subject to the following restrictions.
 - (1) No storage of manure or odor or dust producing materials or use shall be permitted within one hundred fifty (150) feet of any adjoining lot line.
 - (2) No accessory buildings shall be located closer than seventy-five (75) feet of any lot line.
- (K) (deleted June 1995)
- (L) Commercial soil removal.
- (M) Bed and breakfast establishments.
- (N) Day care centers. (Revised August 1996)
- (O) Commercial wireless communication towers. (Revised November 1997)
- (P) Foster Family Group Home (revised 5-24-04)
- (Q) Adult Foster Care Small Group Home (revised 5-24-04)
- (R) Adult Foster Care Large Group Home (revised 5-24-04)
- (S) Adult Foster Care Congregate Facility (revised 5-24-04)
- (T) State Licensed Residential Group Facility (revised 5-24-04)

Chapter 13 – OS – OFFICE-SERVICE COMMERCIAL.

Sec. 13.2 PERMITTED USES.

Land and/or buildings in this District may be used for the following purposes by right:
 (F) Commercial schools including art, business, music, dance, professional, and trade.

- b. As per the definition of commercial, the use of swimming lessons is considered a commercial use because it is a commercial school which offers swimming lessons in exchange for a fee and the lessons are proposed to occur more than twelve days in a calendar year.
- c. The Zoning Ordinance lists zoning districts and the uses allowed in each district, both by right and with special use permit approval. No similar use for a commercial school for swimming lessons is noted as allowed in the LDR district.
- d. The use of a commercial school offering swimming lessons is allowed in all of the commercial zoning districts within the Township.
- e. **Therefore, the conclusion is that the use of a commercial school for swimming lessons is not allowed in the LDR district.**

2. Consideration of allowing the use of swimming lessons as a home occupation in the (LDR) Low Density Residential District:

- a. Relevant Zoning Ordinance sections.

Sec. 2.47 HOME OCCUPATION - Definition

An occupation customarily conducted in a dwelling unit that is clearly an incidental and secondary use of the dwelling.

Sec. 3.24 HOME OCCUPATION - Regulations

An occupation conducted in a dwelling unit, provided that:

- (A) No person other than (1) resident occupant and one (1) employee shall be engaged in such operation.
- (B) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
- (C) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding two (2) square feet in area, non-illuminated, and mounted flat against the wall of the main building.
- (D) The home occupation shall be operated in its entirety within the principal dwelling.
- (E) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
- (F) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family residence. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises.
- (G) Such uses as clinics, hospitals, nurseries, day care centers, tea rooms, veterinarian's office, permanent basement or garage sales, animal hospitals, and kennels shall not be considered as home occupations.

- b. Consideration of compliance with the standards for a home occupation.

Standard A is not met. There are more people than one resident and one employee engaged in the operation on the site.

Standard B is not met. The pool, along with the 1,920 square foot pool building, are used for the swim lessons and for the parents and grandparents to stand on the pool deck and watch the lessons. The addition of 1,920 square feet to the 1,275 square foot house results in a total of 3,195 square feet for the dwelling unit. The use of the 1,920 square foot addition is more than 60% of the total square footage of the dwelling unit, with is more than double what is allowed. The maximum area allowed to be used in the conduct of the home occupation is 798.75 square feet. Even though the proposal notes that only a portion of the shallow end of the pool is used, the proposal also states that parents and grandparent come to watch. Plus people would come prior to their scheduled time to be ready for their ten minute class and even stay after to get dressed. The determination is that realistically the entire addition would be used in the operation.

Standard E is not met. As evidenced by pictures, and witnessed by the Code Enforcement Officer and Building Inspector, there was a large number of vehicles associated with the use. The parked vehicles were located in the front yard as well as in the park across the street. The proposal notes that the classes are only ten minutes in length and parents and grandparents may come to watch.

Due to the fact that the classes are only ten minutes and people come to watch the classes, there will be an overlap of vehicles. Plus, this will result in a large number of vehicles coming and going all day, creating a large amount of traffic, more than would be expected in this neighborhood.

Standard F is not met. Again, as witnessed by the Code Enforcement Officer and Building Inspector, there was much noise that was heard outside of the building.

- c. **Therefore, the conclusion is that the use of a commercial school for swimming lessons does not meet the standards for a home occupation and is not considered to be a home occupation.**

Although the value of the swimming classes you propose to provide is recognized, the Township has the responsibility to protect the community and to uphold the standards of the Zoning Ordinance. The use is an intense use that is allowed in a commercial district by right; however, the use is not allowed in a residential district.

Further, the neighbors have the right to expect low intense uses in this residentially zoned neighborhood and to be protected from the more intense commercial uses that are not allowed. The commercial use of the swimming lessons generates more traffic than would be expected in this residential neighborhood and a greater need for parking, along with more noise than what is normally expected in a residential neighborhood. The Township has commercial areas where more intense uses can locate and where more traffic, parking and noise are allowed and planned to locate.

In this case, while it is unfortunate that more discussion relative to the use had not taken place prior to construction, the Township approved the construction of the pool and the building addition based on the information provided on the building/zoning permit application. No record exists of any approval for the more intense use of swimming lessons as a home occupation or as a commercial use to take place in this addition and pool.

The conclusion is that the use of the building addition and pool for the conduct of the business of swimming lessons is not a home occupation, but rather a commercial use which is not allowed in the LDR district. Any home occupation is required to comply with all of the standards listed in Sec. 3.24 of the Zoning Ordinance and based by the evidence provided, this use does not comply with the standards for a home occupation.

If you have further questions, please let me know.

Sincerely,



Mannette Minier
Zoning Administrator