

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CHARTER TOWNSHIP OF AVON, a
municipal corporation,

Plaintiff,

vs.

No. 82 241146 CZ
HON. RICHARD D. KUHN

AVON COUNTRY MARKET, a Michigan
co-partnership; ROBERT H. YONO
and PAUL G. ESSA, General Part-
ners of AVON COUNTRY MARKET and
VERNA E. WELLS,

Defendants.

CONSENT JUDGMENT

At a session of said Court held in the Court
House in the City of Pontiac, Oakland County,
Michigan, on _____, 1984.

DEC 5 1984

PRESENT: HONORABLE RICHARD D. KUHN, Circuit Judge

The Charter Township of Avon having filed this action to enforce its zoning ordinance and prevent the expansion of a non-conforming use on the subject property, the defendant having filed an Answer and a Counter Complaint contesting the reasonableness of the zoning and the Township's efforts to restrict uses on the property, the parties having resolved the various issues involved in this litigation and the Court being duly advised of the circumstances;

IT IS HEREBY ORDERED that a Consent Judgment shall be and hereby is entered as follows:

1. This Consent Judgment pertains to real property located in the Charter Township of Avon, County of Oakland, State of Michigan, being more particularly described as:

Land in the SE 1/4 of Section 14, T3N, R11E, in the Township of Avon, County of Oakland, State of Michigan, described as: Lots 1 and 2 of Eyster's Bloomer Park Subdivision, according to the plat thereof as recorded in Oakland County Records, Sidwell Nos. B 15-14-478-021 and B 15-14-478-020.

PATTERSON & PATTERSON, WHITFIELD, MANIKOFF, TERNAN AND WHITE, TEN WEST SQUARE LAKE ROAD, STE. 300, BLOOMFIELD HILLS, MICHIGAN 48013

By [Signature]
Deputy

2. Attached hereto and incorporated herein by reference is a Sketch Drawing for the improvement of the described property, which Sketch Drawing is hereby approved. Defendants shall construct, re-construct and make such improvements, install such landscape and otherwise conform to all details contained in the attached Sketch Drawing and this Consent Judgment no later than August 1, 1985. The following represents specific items concerning the improvement and use of the property and are set forth below in order to articulate in writing specific provisions, but other details or items on the Sketch Drawing which are not set forth below shall not be considered as waived or as unnecessary. The specific provisions are as follows:

A. The area for retail sales within the building may be expanded as set forth on the attached Sketch Drawing, so long as all sales area is on the ground floor and is within the footprint of the building as it is presently standing, except for the squaring off of the northwest corner of the building.

B. Before commencing construction of any site improvements, defendants shall apply for and obtain a Site Plan approval and comply with all requirements and regulations pertaining to Site Plans as are provided in the Township Zoning Ordinance. The attached Sketch Drawing is not intended to be an approved Site Plan as required by the Township Ordinance.

C. Defendants shall submit plans for, obtain necessary approvals and permits for, and construct a storm water retention basin on the property.

D. Defendants shall obtain all permits required by the Codes and Ordinances of the Township prior to any work being done on both the exterior and interior of the building.

E. No occupancy shall be allowed in the expanded sales area until all site improvements such as paving, landscaping, berms, walls, retention basin, etc., shall be

constructed and approved, or a bond has been filed as may be allowed in the Zoning Ordinance in lieu of completion of site improvements in order to obtain a Temporary Certificate of Occupancy. If a bond is filed as provided in this paragraph, all site work and improvements shall be constructed and completed no later than December 1, 1985.

F. There shall be no mansard roof on the side of the building on Avon Road.

G. Defendants shall remove the apartment which is presently in the upstairs portion of the building, including the removal of electrical service and plumbing so that the upstairs may no longer be used for dwelling purposes. From and after the date of this Consent Judgment, defendants shall be restrained from using the upstairs of the building on the subject property for apartment dwelling purposes. The upstairs of the building may be used for storage in connection with the retail business.

H. Defendants shall, by June 1, 1985, either tear out the present storage area or re-build that area according to plans which are approved by the Building Department of the Township prior to the work, so that the said area is constructed to meet all fire, electrical and safety codes and be in compliance with barrier-free requirements.

I. From and after June 1, 1985, defendant shall not store nor allow the storage of bottles, merchandise, milk crates, etc., on the exterior of the building. Refuse may be stored on the exterior of the building if it is stored in the manner and in suitable containers as required by applicable Township Ordinances.

J. Defendants shall pave a parking lot on the north side of the building with sufficient parking spaces to meet the requirements for retail sales space according to the applicable provisions of the Township Zoning Ordinance. Defendants shall

also pave a loading and unloading zone on the west side of the building.

K. Defendants shall construct a 4'6" high masonry wall on the west property line adjacent to the parking area and a 4'6" landscaped berm on the south side of the parking area, as set forth in the attached Sketch Plan, as required by Section 1812 of the Zoning Ordinance for retail businesses and a 4'6" high masonry wall, as required by said Section 1812, on the north side of the retail and parking area 100' from the north line of defendants' property.

L. The berm and landscaping to be constructed on the south side of defendants' parking area, west of the building, shall be approved by the Township Planning Commission before construction and installation.

M. At the time the parking area has been paved on the north side of the building, the blacktop along the east side in front of the building and the south side of the building (with the exception of any new bike path which might be constructed by the Township) shall be removed and the area shall be landscaped according to a landscaping plan approved by the Township Planning Commission. Defendants shall further close the east and south sides of the building so that there shall be no entrance into the retail sales area from the east and south sides of the building. No deliveries shall be made from the east or south sides of the building, as deliveries shall only be made from the loading and unloading zone on the west side of the building.

N. Defendants may utilize a trailer for temporary storage during construction for no longer than thirty (30) days. A permit for the trailer shall be obtained from the Building Department prior to its placement on the property. It shall be located west of the building, as much away from vision from Avon and John R Roads as is possible.

3. Defendants shall be allowed the continued use of the property as a lawful non-conforming use so long as the use of the property is consistent with the past use as a retail store and in conformity with this Consent Judgment. The zoning classification, R-3 Residential, is hereby determined to be reasonable and valid. This Consent Judgment hereby requires the upgrading and improvement of the property, limits the business activity and provides for a use of the property which is compatible with the adjoining residential properties.

4. No signs shall be allowed on the property except for two permanent signs no larger than the present signs which are located on the property. The total square footage allowed for one of the permanent signs, the pole sign, shall be no larger than thirty (30) square feet. The other permanent sign allowed shall be the sign presently on the upper part of the building which presently states, "Country Market." Defendants shall also be allowed one shadow box of 3 feet by 8 feet for advertising specials on the front ^(EAST SIDE) of the building. No other advertising shall be allowed at any time on the property or on the exterior of the building. All other signs, except as specifically allowed in this paragraph, shall be removed within sixty (60) days of the date of this Consent Judgment.

5. Defendants shall, on reasonable request, grant to the Township easements for bicycle-pedestrian paths along Avon and John R Road frontages. The improvements and landscaping on the Avon Road side of the property which are to be made or installed by defendants shall be installed or made at the time of construction of the bicycle-pedestrian pathway, or June 1, 1985, whichever is earliest.

6. The north 100' of defendants' property shall be restricted to residential use only.

7. This Court shall retain jurisdiction to interpret and enforce the provisions of this Consent Judgment.


J.P.P. [Signature]

PATTERSON & PATTERSON, WHITFIELD, MANIKOFF, TERNAN AND WHITE, TEN WEST SQUARE LAKE ROAD, BLOOMFIELD HILLS, MICHIGAN 48013

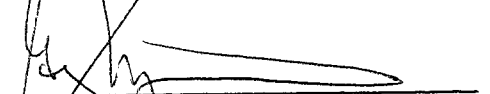
8. This Consent Judgment shall inure to and be binding upon the parties hereto, their successors and assigns and the obligations created in this Consent Judgment shall run with the Land. This Consent Judgment shall be recorded in the office of the Register of Deeds of the County of Oakland.

9. No cost to either party, a public question being involved.


RICHARD D. KURIA
Circuit Judge

Approved: 

Lawrence R. Ternan
Attorney for Plaintiff



Gary D. Merigan
Attorney for Defendants

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PAUL GEORGE ESSA
DEFENDANT