

SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

October 13, 2005

The Saugatuck Township Zoning Board of Appeals met on October 13, 2005, at the township hall on Blue Star Highway, Saugatuck, Michigan 49453.

Present: Oyler, Marczuk and Wester

Absent: None

Also present: Z. A Ellingsen, Attorney Paul Fox, John Balmer, Mark Serald & Geoff Moffat, Attorneys representing opposing neighbor & Terry Thomas.

Chairman Oyler called the meeting to order at 4:03 P.M.

Approval of July 28,2005 ZBA minutes, motioned by Wester, Marczuk second. Carried Unanimously.

One hearing was scheduled: A variance request from John Balmer, Jet Construction & Development, 372 Garden Ave., Holland. The property is located in the A-1 Zone west of 66th Street at 127th Avenue (Parcel's 0320-028-005-00, -006-00, -007-00. The applicant wishes to create a total of 18 single family residential parcels on 45 acres contrary to Sec. 40-140(8) which would only allowed 14 with redivision rights included. The request has been submitted due to an error by the Zoning Administrator in the determination of the number of parcels allowable. If this variance request is granted, the applicant must subsequently gain approvals from the Saugatuck Township Planning Commission for a Planned Unit Development.

Z. A Ellingsen said Balmer came to him 11/2 years ago to divide a parcel for meets and bounds land division act, land division was accomplished. He had 8 divisions allowable to him. A few months later Mr. Balmer came back and discuss a purchase of a piece of property adjacent to that and A. Ellingsen suggested he reconfigure that particular parcel so the lots would be on the north side and the remainder be on the south side and there by combining the parcel he was planning on purchasing he would have a contiguous area to do a site condominium or a plan use development. Subsequent to that he submitted a plan to the planning commission a few months ago, after the submission to Mark Sission, he replied saying the number of lots was not compliant. Z. A. Ellingsen was shocked and devastated. Z. A. Ellingsen went back to the ordinance and went through the process and was stunned that site condominiums and pud's would not be in the mix for the total number of lots was not compliant. Mark Sission thought maybe to do it administratively through the planning commission, being a parent tract it wasn't allowable of 18 lots, which Mr. Balmer anticipated that he would be allow to have. Due to the zoning administrator error Z. A. Ellingsen asked Mr. Balmer to apply to the ZBA for variance for that particular section to allow him to have what he was requesting.

John Balmer- Jet Construction & Development-displayed an aerial map of the A-1 area where his parcel is located. He explained where the 38-acre and where the 16-acre parcel

were located. He explained that he met with Z. A. Ellingsen and was Balmer's understanding that the interpretation that the ordinance allowed the configuration through applying for a PUD in conjunction with the land division. Balmer indicated that Mr. Gould, one of the neighbors, has a substantial amount of property in the area. He pointed out some sub-divisions and PUD's around the area. Mr. Balmer said he has 2 purchase agreements in place right now and 2 more reservations. He displayed a map where the lots would be laid out on his property. He explained that the first division that was approved is going to remain exactly where the 8 land divisions are. Mr. Balmer concluded that there would be no impact on any neighbors but instead increase the value of their property.

Paul Fox- Attorney representing John Balmer- Stated he's been working with Mr. Balmer since the first 8-land division, which was approved. Mr. Balmer came to Mr. Fox and talked about the possibility of a PUD, which is what we are talking about now. Mr. Sission said that there was a problem and the permissible number was 15 or through the variance application 14, opposing party saying only 9, Mr. Fox is looking for 14 or 18. Mr. Fox stated for a variance application there is a determination if there is a unique circumstance to that particular property. Mr. Fox stated that they have a unique standard; they're looking for a non-use variance. The Michigan Case Law says you don't have to find strict necessity to approve a variance you have to find "practical difficulty". Mr. Fox read over the 4 questions of the application from Mr. Balmer and said to look at those as a non-use variance, applying the "practical difficulty" standard. Failure to allow the 18 sites will result in the lot prices in the development and will eliminate potential buyers for affordable lots. Mr. Fox stated that 2.5 acres per building site would work for this parcel, the way the proposal was developed and is being presented.

The Board then asked questions regarding the parcel to Mr. Balmer and Mr. Fox.

Geoff Moffat, Attorney representing opposing neighbor Bruce Gould. Mr. Moffat began objecting to the public hearing notice indicating that 14 available building sites should be 9. Mr. Moffat went on asking the question is there "practical difficulty" unique to the property that creates an inability to comply with the standards of the zoning district? No, "practical difficulty" is not demonstrated and the request for the variance should be denied. Mr. Moffat stated Mr. Gould does not object to development in Saugatuck Township but does object going beyond the A-1 district by allowable use of this parcel by doubling the number of divisions. Mr. Moffat pointed out on the aerial map the other developments around that area are in different zoning districts. Mr. Moffat stated in the zoning ordinance, which in the agriculture district Sec. 40-140, the A-1 district can create only 9 building sites. Mr. Gould does not have any objection to that. Mr. Moffat pointed out that this parcel is no different from the other parcels in the A-1 district. Mr. Moffat concluded that a variance based on administrative error is not stated in the zoning ordinance and if allowed it would only let other property owners to do the same. Mr. Moffat stated that only if you create 2 1/2 acre parcels are you entitled to redivision rights and that the maximum density for a PUD in that district is 9.

Chairman Oyler asked Mr. Moffat if he would waive the objection of the notice from the paper from any further legal actions. Mr. Moffat responded he has the authority and he would waive the notice.

Terry Thomas, 2748 66th St., objects to this development, he believes there would be too many homes for this area. He believes there would be a water issue because of the type of soil. He says it was not planned out thoroughly.

Mark Seveld, representing Bruce Gould, A-1 density of a piece of property is no different than any other property in the A-1 area. Joining a PUD, site condo and ignoring the land division section is disrupting the ordinance and would allow only other property owners in the A-1 to do the same.

Mr. Balmer stated there's confusion on the ordinance. One answer to conform is how many lots are available. Mr. Balmer said applying for a land division, 2 ½ acre sites would take up a lot of green space and trees, applying the limited 2 ½ acre sites are detrimental what people are trying to achieve.

Z. A. Ellingsen concluded land area for that zoned was ½ acre 3 years ago but we changed it to 2 ½ acres because land divisions never separated out that small of a parcel but the added attraction was to allow or disallow the added affect for subdivisions and site condo's and it was not in the old ordinance, which is the issue.

Marczuk to table the variance, Wester second.

Oyler did mention that the reason for this is because of last minute memos being sent to the Board. Oyler said all parties if they want could have something in writing if received within the week.

Chairman Oyler said to leave the meeting open. Oyler motioned, motioned carried unanimously.

Wester motion to adjourn, Marczuk second.

Meeting adjourned at 5:35 p.m.

Lori Babinski, Recording Secretary

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of variance to build a pole barn that is zoned Industrial (2) Ryan Peterson & Crystl Oberth are requesting to add a addition and a deck to their non-conforming single family residence. (3) Terry Stewart is requesting a variance to have a driveway closer than the required 275 feet from adjacent existing driveways.

Oyler introduced the first hearing on a request for a variance by Lola Lawson, 6313 134th, Saugatuck, to build a 40ft. x 60ft. pole barn, contrary to the requirements of sections 40-522 & 40-1046.

Z. A Ellingsen introduced where the Industrial lies and explained that most of the Industrial area is residential. Consequently houses that are here are non-conforming and have been for 20 some years or so. Doesn't allow for any expansion or any use for residential. Consequently this doesn't allow Lola Lawson to build a polebarn. The issue is that it is residential use and has been for many years and the house has been there for a long time but cannot expand the use of it. Consequently Lola Lawson is here to ask for a variance for a particular use.

Wester asked Lola Lawson what she would use the barn for and if she would have a business in it, she replied saying she would be only using it for storage for her car, boat, and motorcycle. There are no problems with setbacks and her parcel is 6 acres.

Z. A Ellingsen did ask the ZBA to give a recommendation to the Planning Commission to look into the entire area and to determine weather or not if it's an excessively large Industrial zone area giving the fact that there are so many non-conformities that have been there for many years. The P.C. are in the process know of changing a portion of the Commercial C-3 zone to make it smaller because they felt it was to big of an area for C-3. The Industrial zone there should be knocked down to a third of its size and go back to an A-2 classification. Wester did agree that it should be recommended to the Planning Commission to shrink or and to grandfather those parcels in the Industrial zone that are residential. Z. A Ellingsen mentioned there are really no industrial uses in that area. Z. A Ellingsen stated that Lola Lawson's parcel is non-conformity with the residential use and in order to have an accessory use property you have to have a conforming use of the zone. Since her resident is a non-conforming use you can't have a an accessory building or no one in that zone can build a garage or put up an accessory building on that property with out a valued conformity use to it.

Oyler read through the questions on finding the facts for approval or denial of variance request:

(1). Can the land be reasonably built or used in conformance with the Ordinance?
The board answered no.

(2). Was the hardship self-imposed? The board answered no.

(3). Do unique circumstances exist for this parcel? The board answered yes.

(4). Would a variance alter the character of the neighborhood? The board answered no, it would be “conforming” to the neighborhood. Z. A. Ellingsen mentioned it is in a residential neighborhood.

(5). Do unique or exceptional extraordinary conditions apply to this property that generally do not apply to other properties in the same zoning district? Yes.

There was no letters, calls or anybody at the meeting for this variance request.

Wester made a motion to approve Lawson’s application for a variance from Sec.40-522 & 40-1046, and Marczuk seconded.

Oyler than introduced the second request from Ryan Peterson, 6347 Old Allegan Rd., Saugatuck, to add a 15ft. x 26ft. addition and a deck to a non-conforming single family residence. The parcel is 50ft. x 385ft. and the residence is closer to the side lot line than the 10 feet required in the R-2 zone and closer than 40 feet from the Private Road as stated in Sections 40-277(3)a & b. The proposed addition and the deck will be closer than the required setbacks.

Z. A Ellingsen stated it is a non-conforming lot and also has excess easement that runs through part of it, which exacerbates the situation. The house has been there for a lot of years and they want to add to it but it appears that their wanting to add to the house on the north side adjacent to the east side. The rest of the setbacks are compliant. It’s the side yard that’s the problem. They are going to have some overlying deck area approaching the neighbors. The easement overlaying into the other parcel is 16ft., which would give them 34ft. of their lot line. The easement is used for either property to get to their parcels, if it wasn’t an easement it would be considered a private road. The problem is because of the easement and also the lot line is only 50 ft. wide. A normal lot width is 150 ft. wide.

Crystl Oberth, wife of Ryan Peterson, presented a model of the house as it is now and a model of what it would look like afterwards. She explained to the board the situation of the deck approaching the east side of the property. Oberth & Peterson are proposing to add to the front 15ft. out and 26ft. wide and to also build a basement under that.

Neighbors from the direct west side were present at the meeting. Elizebeth and Brent Johnson, 6351 Old Allegan Road, Saugatuck, supported their request and had no problems with them adding on to their home.

Wester had asked how long they had been in this home and they replied a year and a half. Wester also asked what the square footage of the house was and Oberth said 1200 sq. ft. The total sq. ft. of the new addition and deck and the existing house will be 2400 sq. ft. Essentially they are down grading in square footage of the house. The current deck is right on the easement; essentially it will bring the new deck further away from the easement. They are moving the steps back but the house itself will be moved up 4 feet closer. Current structure doesn’t meet the setbacks.

Oyler read through the questions on finding the facts for approval or denial of variance request:

(1). Can the land be reasonably built or used in conformance with the Ordinance? The board answered yes.

(2). Was the hardship self-imposed? Sort of. Because they just bought the house not long ago, they should of looked into it more to see if they could of added on. The board is not supposed to help people that put themselves in a bad position. The board is supposed to try to enforce the ordinances.

(3). Do unique circumstances exist for this parcel? Yes (easement)

(4). Would a variance alter the character of the neighborhood? No

(5). Do unique or exceptional extraordinary conditions apply to this property that generally do not apply to other properties in the same zoning district? No

Wester suggested redevelop and keep the building itself in the same footprint. Wester recommended that they table it and pay no additional charges to come back. Than the board can consider it being grandfathered in. Wester made a motion to table it. Marczuk made a motion to approve Peterson's application for a variance from Sec. 40-277(3)a & b, and Oyler seconded. The vote was 2 to 1, with Wester voting NO. Motion carried.

Oyler introduced the third request from Terry Stewart, 455 Culver St., Saugatuck, for a variance found in Sec. 40-849-Driveway spacing and location. Applicant wishes to be closer than the required 275 feet from adjacent existing driveways. The project is located at 3385 Blue Star Hwy, Saugatuck and the proposed construction is a 3000 sq. ft. office building. The parcel is a lot of record and is not compliant with the current minimum lot width of 200 feet in the C-2 Zone. If the above variance is granted the Planning Commission must review and approve the Final Site Plan.

The issue is that the new ordinance requires along the Blue Star corridor to have 275 feet from each driveway. It's based upon the speed limit of the road.

The Planning Commission has addressed this issue and is going to the public hearing on the 27th of June 2005. Where they can take this section and allowing the Planning Commission to discretionary authority to limit this if there is an existing problem. They are in the process of changing it at the public hearing if the board approves it. Even if it is approved from the ZBA it will go to the PC for a conforming allowable use of the zone for a site plan review. Future PC will react to this as a discretionary item rather than coming to the ZBA for a variance.

This is a vacant lot, used to be a car lot. Mr.Stewart tore down the old building that was there. No water issue. A variance was granted recently to Jeff Klemm for an office building not to far from this parcel. Mr. Stewart is planning on building an office building with 1 or 2 occupancies. Parking spaces will depend on the square footage of the building and the discretionary authority of the PC.

Oyler went through the questions:

(1). Can the land be reasonably built or used in conformance with the Ordinance?
Not really.

(2). Was the hardship self-imposed? Perhaps. Mr. Stewart thought that since it was a car lot business he would not have a problem putting an office building in.

(3). Do unique circumstances exist for this parcel? Yes

(4). Would a variance alter the character of the neighborhood? No

(5). Do unique or exceptional extraordinary conditions apply to this property that generally do not apply to other properties in the same zoning district? Yes

There had been no letters or calls or no one present at the meeting on this variance request. Oylar made a motion to approve Stewart's variance from Sec. 40-849. Marczuk seconded. Wester agreed also and commented that the property would be rendered useless if the variance wasn't granted.

Approval of April 21st, 2005 ZBA minutes, Motion by Wester, Marczuk seconded. Carried unanimously.

Meeting adjourned at 5:10 P.M.

Lori Babinski, Recording Secretary