

## SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

October 27, 2005

The Saugatuck Township Zoning Board of Appeals met on October 27, 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 Sevald & Geoff Moffat, Attorneys representing opposing neighbor, Terry Thomas, Dick Nagy & Bob Ragina.

Chairman Oyler called the meeting to order at 4:00 P.M.

Approval of October 13, 2005 ZBA minutes, motioned by Marczuk, Wester second. Carried Unanimously.

A continued public 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 66<sup>th</sup> Street at 127<sup>th</sup> 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.

Chairman Oyler stated it was a continued hearing and the public portion was not closed on October 13, 2005. A notice was sent out only for the parties involved and was posted outside on the board. A packet was received from the applicant and also a fax from Mr. Sevald & Mr. Moffat and a letter from another adjoining landowner representing Hudson Farms. Oyler stated before we close the public portion of the hearing, he is giving everyone an opportunity to speak to the ZBA one last time.

John Balmer-Jet Construction, wanted to respond to the letter from Mr.Nagy. Engineers stated that soil samples and septic conditions have all been done.

Mr. Fox- Attorney representing Mr. Balmer, stated that the ZBA look at the variance as a "practical difficulty" criteria.

Mr. Sevald- Attorney representing Mr.Gould, stated that he submitted a letter to the board and a copy to Mr. Fox.

Mr. Nagy-2513 66<sup>th</sup> St.- has an adjacent property south of Balmer's parcels, known as Hudson Farms. Mr. Nagy stated he knows that type of soil and his concern is the overload of housing that there would be septic problem.

Oyler stated that today's meeting is one issue and that is if whether or not to grant a variance for 18 parcels.

Marczuk asked Balmer what was the number given to you during this whole process. Balmer stated 18, based on acreage divided by 2.5. Mr. Balmer stated he purchased the 30 acres first than purchased the 16 acres, which is the road. Wester than stated through the reading of the covenant he doesn't believe that the average working family would be able to afford to live on serenity pines subdivision. Mr. Balmer replied that houses would sell between \$350,000 and \$400,000. Wester asked what was 6,7,8 lots for. Balmer replied it was purchased as the 16 acres and would be applied for the PUD application. Wester stated that the 18 building sites on 46 acres one site per 2.56 acres, the site will not be 2.56 acres but the amount you divide will be 2.56 acres.

Motion to close the public portion, motioned by Marczuk, Wester second.  
Carried Unanimously.

Chairman Oyler stated this means the board will deliberate to reach a decision. Oyler suggested that the standards being one or the other or both to come to the decision. The 2 standards being the 4 questions in the ordinance and the other standard that Mr. Fox is referring to in this case as a "practical difficulty" or as a non-use variance. Oyler stated for legal reasons they will be reading all seven questions.

Chairman Oyler read the 4 standards according to the ordinance-Sec. 40-76. The ordinance requires that each of these questions apply before granting a variance.

1. Exceptional or extraordinary circumstances. Answer No.
2. Necessary for preservation of substantial property right. Answer No.
3. No detriment to adjoining landowners or impair intent and purposes of ordinance. Answer No.
4. Create new zoning standard. Answer No.

Chairman Oyler replied by finding the standards of the ordinance leads them to deny the request for a variance.

Chairman Oyler read the standards from Mr. Fox's proposed standards, submission Oct 21, 2005. National Boatland, Inc v Farmington Hills Zoning Bd of Appeals, 146 Mich App 380, 387; 380 NW2d 472 (1985).

1. Prevent use of property for permitted purpose. Answer No.
2. Substantial justice to applicant AND adjoining landowners. Answer 2 Yes's and 1 No.
3. Will maintain the "spirit" of the ordinance. Answer 1 Yes and 2 No's.

Marczuk's overthought was that conditions were specific and the first 4 conditions were not. Wester agreed with Marczuk and that it is zoned agriculture and there is somewhat a

hardship because of misinformation however it doesn't change the law in what the ordinance says that it is strictly agriculture. Oyler replied that there is nothing in the ordinance that rectifies a mistake. Chairman Oyler stated that there couldn't be any variance issued.

Motion to deny the request for a variance. Motioned by Wester, Marzcuk second.  
Carried Unanimously.

Chairman Oyler stated to Mr. Balmer that he can still develop that land but cannot have 18. Mr. Balmer asked what number he can use; Oyler stated he would have to go before the Planning Commission. Wester wanted to say that Balmer did his homework and has the right idea but the ZBA has to interpret the law as in the township.

Motioned to adjourn. Motioned by Wester, Marzcuk second.

Meeting adjourned at 4:47 p.m.