

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS REGULAR MEETING MINUTES *APPROVED*
5151 MARSH ROAD, OKEMOS, MI 48864-1198
(517) 853-4000
WEDNESDAY, MAY 12, 2021
TOWN HALL ROOM**

PRESENT: Chair Mansour, Members Field-Foster, Newman, Opsommer (arrived at 6:36 pm), Shorkey

ABSENT: None

STAFF: Community Planning and Development Director Kieselbach; Assistant Planner Chapman

1. CALL MEETING TO ORDER

Chair Mansour called the meeting to order at 6:33 p.m.

2. APPROVAL OF AGENDA

MEMBER SHORKEY MOVED TO APPROVE THE AGENDA AS SUBMITTED.

SECONDED BY MEMBER FIELD-FOSTER

ROLE CALL TO VOTE:

YEAS: Members Field-Foster, Newman, Shorkey, Chair Mansour

NAYS: None

Motion carried: 4-0

3. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES - NONE

4. COMMUNICATIONS - NONE

5. UNFINISHED BUSINESS - NONE

6. NEW BUSINESS

A. ZBA CASE NO. 21-05-12-1 (Sherman), 1167 Woodside Drive, Haslett, MI, 48840 - POSTPONED

A. ZBA CASE NO. 21-05-12-2 (Usman), 4850 Arapaho Trail, Okemos, MI, 48864

DESCRIPTION:	4850 Arapaho Trail
TAX PARCEL:	20-281-014
ZONING DISTRICT:	RAA (Single Family, Low Density)

The variance request is to make improvements within the floodplain at 4850 Arapaho Trail.

Assistant Planner Chapman outlined the case for discussion.

Chair Mansour asked the applicant or the applicant's representative if they would like to address the Zoning Board of Appeals (ZBA).

Sam Usman, 4850 Arapaho Trail, applicant, stated he did work in the floodway without a permit. He stated he had spoken with DC Engineering and Michigan Department of Environment, Great Lakes and Energy (EGLE), and township staff regarding the proposed plan to remove the berm and other work in the floodway.

Peter Cook, 4830 Arapaho Trail, neighbor to the south, stated that although he cannot see the work that was completed, he can see it when he kayaks. He stated that removing the berm, stone wrap, and the other work will not have an effect on the flood levels, and the work the owners have completed looks nice.

Kurt Krahulik PE, DC Engineering, 1210 N Cedar Street, Lansing, stated his firm performed the engineering work and is available for questions on the plans or the hydraulics of the river.

Member Newman asked which variance is being considered.

Director Kieselbach stated the Zoning Ordinance does not allow work in the floodplain except under certain conditions and the review criteria has been met. The review criteria is from the Conservancy District (floodplain regulations). If the Zoning Board of Appeals (ZBA) should choose to grant the variance, the variance would allow the applicant to retain the concrete pad, fire pit, stone wall along the river and a small amount of the bank stabilization material which is in the floodway. The applicant has agreed to remove the other items specified on the map by EGLE.

Member Newman asked why the structures are being allowed to remain.

Director Kieselbach stated the applicant would not be allowed to have the structures in the floodway without the variance. These structures have a low impact to potential flooding. The Township Engineers, who are also certified Floodplain Managers, do not have an issue with these structures if this variance was granted.

Member Opsommer asked when the Township passed the Zoning Ordinance prohibiting structures in the floodway since it appears this residential area was developed in the 1960s and a majority of the structures are now in the floodway.

Director Kieselbach stated the Township has had floodplain regulations dating back to the 1960s. The Township had a severe flood in the 1970s and the Zoning Ordinance was rewritten to consider the situation and not allow any habitable space in the floodway or floodplain. This subdivision was approved just days before the update to the Zoning Ordinance and the waiver to allow the exceptions was added in 1975.

Member Opsommer asked if the compensating cut has occurred and will that bring this request into compliance.

Director Kieselbach replied the fills have occurred and the compensating cut will need to be completed to bring the area into compliance. The compensating cut could be made as a condition

of the approval. The applicant will still need to certify with EGLE on the compensating cut and the work that has been performed has been approved by EGLE.

Chair Mansour stated she is going to allow a resident to speak who was unable to join the meeting during public comment.

Marsha Leister, 2525 Small Acres Lane, stated she owns 2525 and 2517 Small Acres along with two additional lots for a total of seven acres. She stated the Red Cedar River flows through her properties and the previous owners, the Barron's, dredged the marshland and constructed the stone wall to maintain the natural flow of the Red Cedar River. Over the years, the river has been returning to its natural state and on occasion floods her property creating a peninsula. She voiced concern with the amount of work that was allowed to be performed on the applicant's property because it has now caused additional flooding on her property. She stated she is opposed to adding cement in this area.

Member Field-Foster asked the applicant who performed the work.

Mr. Usman replied he hired a landscaper and stated he did not know about the regulations concerning the floodway. He wanted to enjoy his backyard and shelter their young child from the river.

Member Field-Foster asked why was the concrete pathway constructed by the pool.

Mr. Usman stated the pool is not attached to the house and felt the concrete pathway made the area around the pool safer.

Engineer Kurt Krahulik stated that a portion of the pool deck is adjacent to a 20-foot drop into the river and wanted to extend the two-foot deck to avoid walking off it. The pool deck itself is out of the floodway but the fill for the concrete pathway is not.

Member Newman stated EGLE has determined that this will not affect the floodway and he would not want to assume otherwise.

Chair Mansour stated EGLE oftentimes does not have as robust requirements as the Township but EGLE's approvals are necessary.

Trustee Opsommer asked if the compensation cut was approved in this area of the parcel.

Engineer Krahulik stated no and there are steep banks but the cut will not affect the floodplain. The floodway cut will have an impact on the water storage areas and the cut will be insignificant. Also, only a small amount of stone rip-rap will remain when the berm is removed and then a turf reinforcement mat will be installed.

Member Field-Foster asked if all the houses in the neighborhood are in the floodway or floodplain because this would mean the homes would all need variances if they wanted to do work in their yards.

Director Kieselbach stated this request is for work in the floodway. The floodplain includes the floodway and floodway fringe. The northern portion of the subdivision along the river close to Herron Creek is all floodway and some of the residences are in the floodplain or floodway fringe.

which is restrictive. If any of the homes wanted to add structures such as decks or patios, then it would require a variance.

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. Chair Mansour stated the structures are already in place and find this to be a unique circumstance because they are already installed.

Chair Mansour read review criteria two which states these special circumstances are not self-created. Chair Mansour stated she could not state that these circumstances were not self-created because the applicant installed the structures. Due to the historical changes to the Zoning Ordinance in 1975 just after this subdivision was built and not wanting to change the Zoning Ordinances to allow for non-habitable structures to be built in the floodplain, this results in a case-by-case review for approval.

Member Field-Foster read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. Member Field-Foster stated the homeowner cannot do anything on the property that would not require a variance and that would be a practical difficulty.

Member Field-Foster read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose. She stated she does not see that if the owner is prevented from building a fire pit it would prevent the owner from using the residence for its permitted purpose and not every residence in Meridian Township has a fire pit. Member Field-Foster asked if there were other safety features or precautions that could have been taken around the pool area to avoid individuals from falling down the embankment. She stated she is unsure she can agree that this criteria has been met.

Chair Mansour stated with the structures already in place, this creates a unique circumstance. If the variance is denied, the following items would have to be removed: fire pit, concrete pathway, berm, and stone rip-rap at the edge of the pool deck, the extension of the pool deck, and concrete for the patio deck. The removal of these items could be considered unreasonable because these structures already exist. She asked what the result would be if these items are removed because, with the removal of the berm, there is the requirement to install additional stabilization material.

Member Shorkey stated the pool and patio were already installed. He stated he understands about maintaining and improving the existing facilities but found the explanation about the fence questionable. The fire pit area is a self-created issue. He questioned that the owner did not know his residence was in a floodplain and while he may not have known regulations, the floodplain is not unique to this neighborhood and surrounding area. He stated he could support the concrete patio and decking around the pool for safety purposes but is not sure about accepting the fire pit and concrete pathway to the fire pit. He stated if everything in this neighborhood requires a variance, what then is the unique circumstance for this request?

Trustee Opsommer stated he also has concerns with the fire pit. He stated he believes a majority of the fill was for the pool area and riverbank stabilization. He stated the flooding in this area is very severe at times and fencing with spindles to protect children might dam up the water flow. He stated the predominant issue is to protect the public interest in this area. He stated he could

agree with review criteria one, two and three, but is unsure he could agree with review criteria four.

Member Field-Foster asked if the ZBA could address the structures separately because she could not agree to the fire pit because of review criteria four and five.

Director Kieselbach stated the ZBA can split the question.

Chair Mansour stated the ZBA and applicant has agreed that the berm and water feature are to be removed and the compensating cut will go back to net zero and the ZBA members will now evaluate the review criteria as it pertains to the patio and pool deck.

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. Chair Mansour stated based on the zoning in this area, this review criteria has been met.

Chair Mansour read review criteria two which states these special circumstances are not self-created. Chair Mansour stated any change in this area will require a variance and this is not a self-created circumstance for the patio and pool deck.

Chair Mansour read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. Chair Mansour stated if looking at just the patio and pool deck, any improvement would require a variance and the safety aspect would meet the requirement of practical difficulties.

Chair Mansour read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose.

Member Newman stated he could support a 42" rim around the pool to use it safely and supports the need for concrete repairs.

Chair Mansour stated by not allowing the owners to improve their property or to replace a broken patio or install a walkway for safety purposes would unreasonably prevent an owner from using their property.

Chair Mansour read review criteria five which states granting the variance is the minimum action that will make possible the use of the land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance, secure public safety, and provide substantial justice. Chair Mansour stated the variance for expanding the patio rim around the pool and concrete replacement were minimum actions.

Chair Mansour read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. Chair Mansour stated for the two structures this review criteria has been met.

Chair Mansour read review criteria seven which states the conditions pertaining to the land or structure are not as general or recurrent in nature as to make the formulation of a general

regulation for such conditions practicable. Chair Mansour stated for the two structures this review criteria has been met.

Chair Mansour read review criteria eight which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter. Chair Mansour stated for the two structures this review criteria has been met.

MEMBER FIELD-FOSTER MOVED TO GRANT THE VARIANCE FOR THE POOL DECK AND FOR THE PATIO DECK IN ZBA CASE NO. 21-05-12-2 (Usman), 4850 ARAPAHO TRAIL, OKEMOS, Okemos, MI, 48864

SECONDED BY CHAIR MANSOUR

Chair Mansour added as a friendly amendment, the compensating cut will be net-zero and this has full EGLE permitting and approval.

Engineer Krahulik stated the removal of the berm and stone rip-rap which will be replaced with the non-biodegradable ground cover will be part of the soil erosion plan even if it is not required by EGLE.

Member Field-Foster accepted the friendly amendments.

ROLE CALL TO VOTE:

YEAS: Members Field-Foster, Newman, Shorkey, Opsommer, Chair Mansour

NAYS: None

Motion carried: 5-0

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. Chair Mansour stated based on the zoning in this area, this review criteria has been met.

Chair Mansour read review criteria two which states these special circumstances are not self-created. Member Field-Foster stated it is not self-created because it is a floodway.

Chair Mansour read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. Member Field-Foster stated any type of improvement would require a variance and this would result in a practical difficulty.

Chair Mansour read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose.

Member Field-Foster stated to deny the request for a fire pit would not unreasonably prevent the owner from using the property for its permitted purpose.

Member Opsommer agreed the fire pit does not fit the review criteria although the fire pit does not impact the required compensating cut.

Chair Mansour read review criteria five which states granting the variance is the minimum action that will make possible the use of the land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance, secure public safety, and provide substantial justice. Chair Mansour stated she cannot meet this criteria.

Member Field-Foster stated there are alternative ways to have a fire pit.

Chair Mansour read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. Chair Mansour stated she could meet this criteria but not review criteria four or five

Chair Mansour read review criteria seven which states the conditions pertaining to the land or structure are not as general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. Chair Mansour stated she could meet this criteria but not review criteria four or five.

Chair Mansour read the eight review criteria which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter.

Chair Mansour reviewed the special three criteria from the Conservancy District (floodplain regulations) as it pertains to the pool deck, patio deck, and fire pit:

1. No variance shall be granted for the development of new structures, the substantial improvement or relocation of old structures, or development of any kind within the floodway area when such development, construction, improvement, or relocation would cause any increase in flood levels associated with the base flood elevation.

Chair Mansour stated the Township Engineer has stated patio deck and pool deck structures will not cause any issues and he also stated the fire pit will not cause any issues.

2. a. A sufficient cause for granting the variance must be shown.

Chair Mansour stated there has been sufficient evidence and cause to grant the variance for the pool deck and patio deck. She stated she is not finding sufficient cause for the fire pit.

Mr. Usman asked if the experts state the fire pit does not affect the net-zero gain and the ZBA board members have stated he can install a different type of fire pit which would result in the same function, why then is he being asked to remove something that is already installed; why can't he keep the fire pit because the concrete does not affect anything.

Chair Mansour stated the criteria is very strict and it is a challenge to meet it. It is intended to be a challenge otherwise all the variances would be granted. Although the fire pit does exist, a fire pit does not prevent the homeowner from using the property. The ZBA members were able to meet halfway on the pool deck and patio deck structures because they are existing uses, maintenance repairs were needed and for safety reasons but not for the fire pit because it is a new structure.

Member Newman stated unfortunately the fire pit is installed but depending on the decision, the fire pit may need to be removed. To state that although a rule was broken resulting in the installation of the fire pit does not mean it would automatically be approved. If the fire pit is approved, it could create additional issues where other neighbors will want similar variance requests approved.

Chair Mansour stated her major issues are with the amount of work that was performed without any prior approvals and then a request arrives to ignore the rules and approve the work just because it has already been installed. This creates a precedent and is why each case is considered individually and a case is approved because it meets the criteria. The problem is the work was completed without permits.

Mr. Usman stated he accepts full responsibility for not obtaining the permits but if he had taken the proper steps, would the fire pit in its current location be approved by the ZBA.

Chair Mansour stated if the applicant had applied for the permit, the Building Department would have referred it to the ZBA because of the location in the floodway. The ZBA would not have approved the fire pit in its current location.

Mr. Usman stated the fire pit's construction resulted in a net-zero gain. He stated he should have the right to enjoy his property and he would like a fire pit to enjoy his property.

Member Field-Foster stated the minimum action could have been a free-standing fire pit because it would not have been a permanent structure. The applicant has constructed a permanent structure that is in the floodway and while there is a net-zero gain, the review criteria states that denying the variance request would unreasonably prevent the applicant from using their residence. A fire pit does not unreasonably prevent the use of the residence or enjoyment of the backyard.

Mr. Usman stated it is unreasonable to require him to move a fire pit and chairs back and forth to enjoy his property. He understands he did not do the work the right way but feels the logic is flawed to require him to remove it now that it is installed.

Chair Mansour stated the variance stays with the house. There is stringent review criteria to be met as well as additional review criteria. A resident is not required to have a fire pit to live in Meridian Township. It is not the sole permitted purpose for owning a residence. The habitable structure is the permitted purpose. The ZBA Board can meet the review criteria for the existing patio and pool decks, the need for repairs, and expanding the pool deck for safety purposes. The ZBA is stating this was not an existing fire pit and the fire pit is not necessary to use the property for its permitted purpose. The ZBA does not like to require an item or structure to be removed when it has already been installed but the request must meet the review criteria.

- b. A determination that failure to grant the variance would result in a practical difficulty to the applicant.

Chair Mansour stated Mr. Usman has stated it would be a practical difficulty to remove a fire pit that has already been installed. She stated she could agree with his reason but his reason does not apply to this criteria.

- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense or will not create nuisances, cause fraud on or victimization of the public or conflict with this chapter.

Chair Mansour stated the listed review criteria do not apply directly to the fire pit but the pool deck and patio deck do meet the review criteria.

- d. A determination that the variance is the minimum necessary to afford relief.

Chair Mansour stated this review criteria could be met for the pool and patio decks but is not sure it could be met for the fire pit.

Member Field-Foster stated the reasons under the first eight review criteria are the same for this review criteria as it pertains to the fire pit,

Chair Mansour referred back to review criteria four and five as it pertains to the fire pit area.

MEMBER SHORKEY MOVED THAT THE VARIANCE REQUEST FOR THE FIRE PIT IN ZBA CASE NO. 21-05-12-2 (Usman), 4850 ARAPAHO TRAIL, OKEMOS, MI, 48864 BE DENIED DUE TO BEING UNABLE TO MEET THE REVIEW CRITERIA REQUIREMENTS OF #4 AND #5

SECONDED BY MEMBER FIELD-FOSTER

ROLE CALL TO VOTE:

YEAS: Members Field-Foster, Newman, Shorkey, Opsommer, Chair Mansour

NAYS: None

Motion carried: 5-0

7. OTHER BUSINESS

None

8. PUBLIC REMARKS

Chair Mansour opened the floor to public comment at 8:50 pm

Marsha Leister asked if the compensating cut is in the 100-year floodplain or floodway.

Director Kieselbach replied it is all in the 100-year floodplain consists of floodway and floodway fringe and the compensating cut will be in the floodway portion of the floodplain.

Marsha Leister asked who owns the gully/inlet between Mr. Usman and the golf course properties.

Mr. Cook stated that the parcel was taken over by the Township for failure to pay taxes.

Marsha Leister stated if the wood was removed, it would assist with the erosion problems Mr. Usman is having on his property and it would keep flooding down on her property. She stated she has an approved fire ring and although she would love to have cement and rocks around her fire pit, she knows it would not be approved because that is part of living on the river.

Chair Mansour suggested Ms. Leister write to the Township and Planning Commission about tree removal on the neighboring parcel.

Brian Beauchaine, 5077 Meridian Road, stated he was sworn in on the ZBA in 1998 by former Clerk Virginia White. He stated he was humbled to serve with Director Kieselbach who has led the Community Planning and Development Department in a way that this Township will appreciate for a long time. This is Director Kieselbach's last ZBA Meeting and this is still the best meeting with the best board. He thanked Director Kieselbach for protecting the Township for 41 years and transitioning into retirement is something that Director Kieselbach deserves.

Chair Mansour thanked Mr. Beauchaine for his many years of service on the ZBA Board and stated his presence is missed.

Chair Mansour closed the floor for public comment at 8:55 pm.

9. MEMBER COMMENTS

Chair Mansour also thanked Director Kieselbach for his service of 496 months which is an extraordinary number. She expressed her appreciation for having Director Kieselbach for so long, learned so much from his insight, and the extraordinary service to the Township. Congratulations to Director Kieselbach on his retirement.

Director Kieselbach thanked the Zoning Board of Appeals. It has been a pleasure to work with this Board over the years. As a young planner, his first Zoning Board of Appeals case was in 1987. As a planner, he had to know the Zoning Ordinance and be able to communicate that Ordinance. It was a great learning experience and had a lot of good mentors on the Board and from staff members. He has worked with good Planning Directors and it was a great experience working for the Township.

Trustee Opsommer stated he is unaware of the Township owning land in this area and asked if the Township does own land adjacent to the property being discussed tonight.

Director Kieselbach stated staff will look into it. If the property was tax reverted, it would go to Ingham County first and then the County would ask the Township if it would want to accept it.

Trustee Opsommer stated he does not remember voting on it at the Township Board level. When asked about the parcel, Mr. Cook stated he thought it was the Township who took it over but maybe it was the County. There were signs posted on the property about taxes being unpaid. The parcel is north of the golf course and east of his property on Herron Creek. Trustee Opsommer stated there are other efforts in the area to remove logs and asked Director Kieselbach to speak with Deputy Township Manager Perry about this issue. The Drain Commissioner's Office is performing clearing work in that area.

10. ADJOURNMENT

Meeting adjourned at 9:03 pm.

Respectfully Submitted.

Robin Faust, Administrative Assistant II