

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS MEETING MINUTES ***APPROVED***
5151 MARSH ROAD, OKEMOS MI 48864-1198
517.853.4000
WEDNESDAY, July 26, 2017**

PRESENT: Members Jackson, Ohlrogge, Lane, Rios (alternate), Chair Beauchine
ABSENT: Member Stivers
STAFF: Mark Kieselbach, Director of Community Planning & Development
Keith Chapman, Assistant Planner

A. CALL MEETING TO ORDER

Chair Beauchine called the meeting to order at 6:30 p.m.

B. APPROVAL OF AGENDA

MEMBER OHLROGGE MOVED TO APPROVE THE AGENDA AS WRITTEN.

SECONDED BY MEMBER JACKSON.

VOICE VOTE: Motion carried unanimously.

C. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES

Wednesday, June 28, 2017

MEMBER LANE MOVED TO APPROVE THE MINUTES OF WEDNESDAY June 28, 2017 AS WRITTEN.

SECONDED BY MEMBER RIOS.

VOICE VOTE: Motion carried unanimously.

D. COMMUNICATIONS

E. UNFINISHED BUSINESS

None.

F. NEW BUSINESS

1. ZBA CASE NO. 17-07-26-1 (CHVALA), 5540 EARLIGLOW LANE, HASLETT, MI 48840

DESCRIPTION: 5140 Times Square Drive
TAX PARCEL: 15-400-027
ZONING DISTRICT: CS (Community Service)

This request has been cancelled.

2. ZBA CASE NO. 17-07-26-2 (FUHRMAN), 6035 ELLENDALE DRIVE, LANSING, MI 48911

DESCRIPTION: 2472 Hawthorn Lane
TAX PARCEL: 20-378-010

ZONING DISTRICT: RR (Rural Residential)

The applicant is requesting variances from the following section of the Code of Ordinances:

Section 86-565(1), No accessory building shall project into any front yard.

The applicant is requesting to construct an accessory building (garage) that will project into the front yard.

Keith Chapman, Assistant Planner, outlined the case for discussion.

Chair Beauchine opened the floor for public remarks, seeing none, closed public remarks.

Brian Fuhrman, representative for the applicant, 6035 Ellendale Drive, Lansing 48911, stated the proposed garage location is the only location on the property due to the flood plain area and how it runs through the property. He added the current carport is aging and collapsing and needs to be replaced.

Chair Beauchine questioned staff on the front yard location and the orientation of the house to the property line.

Director Kieselbach stated as the Zoning Board of Appeals (ZBA) knows there is a building envelope which sets the standards for dimensions for buildings and setbacks from the property line. However, once a house is set on the property the front yard dimension is set. He indicated on the plot plan the front yard is everything running north and south on the west side of the property.

Member Ohlrogge stated from the review criteria (Section 86-221), this case meets all the criteria for a variance request she then read review criteria one, 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. She stated most of the property is located in the flood plain area where construction is prohibited creating a unique circumstance and situation.

Member Ohlrogge read review criteria two, which states these special circumstances are not self-created. She added the structure and wetlands already existed so it is not a self-created situation.

Member Ohlrogge read review criteria three, which reads strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. She replied the need for a garage in winter time is a safety reason.

Member Ohlrogge read review criteria four, which states 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 or would render conformity with such restrictions unnecessarily burdensome. She stated this relates to having a safe place to park your car in the winter.

Member Ohlrogge referenced review criteria five, which reads 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. She replied the plot plan indicates the only location for the garage site which creates a very unique situation and by having a garage to use during the winter provides substantial justice.

Member Ohlrogge read review criteria six, which reads granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. She commented because it is in a rural location set far enough back off the private road and is visual concealed by vegetation it would not adversely affect adjacent lands or property.

Member Ohlrogge read review criteria seven, which reads the conditions pertaining to the land or structure are not so general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. She stated she has already provided several factors and characteristics of the property which make this case not so general and recurrent in nature.

Member Ohlrogge read review criteria eight, which reads granting the variance will be generally consistent with public interest, the purposes and intent of this Zoning Ordinance. She replied no one wants to build a structure in a flood plain area and the current proposed location of the garage is the best location although, it happens to be in the front yard of a zoned rural- residential area.

Member Jackson stated she agreed totally with Member Ohlrogge assessment of the subject property meeting all eight review criteria and added granting the variance is appropriate in this case.

MEMBER RIOS MOVED TO APPROVE THE VARIANCE REQUEST SECTION 86-565(1)

MEMBER OHLROGGE SECONDED.

Chair Beauchine added stating this case is an example of an appropriate use of the ZBA and appeal process.

ROLL CALL VOTE: YES: Members Ohlrogge, Rios, Jackson, Lane, and Chair Beauchine.

NO:

Motion carried unanimously.

3. ZBA CASE NO. 17-07-26-3 (TUCKER & SAFFARIAN), 1307 HARRINGTON LANE, EAST LANSING, MI 48823

DESCRIPTION: 6248 Pine Hollow Drive

TAX PARCEL: 04-151-014

ZONING DISTRICT: RAA (Single Family, Low Density)

The applicant is requesting a variance from the following section of the Code of Ordinances:

Section 86-471 (b)(4), All structures and grading activities shall be setback from the edge of a water feature as follows: Open county drains or creeks: 50 feet, as measured from the top of the bank on the side of the drain where the structure is to be located or grading activity is to occur.

The applicant is requesting to construct a fence within the 50 foot water feature setback from an open county drain.

Keith Chapman, Assistant Planner, outlined the case for discussion. He added the property is vacant and a building permit has been submitted for the construction of a single family home.

Catherine Tucker, applicant and property owner stated her reasons for the fence are for safety and privacy. She added the lot is unique with 2 front yards, and the property abuts a large county open drain with a steep drop off, she and her husband have safety concerns for their dogs, small children and the public in and around that area.

Chair Beauchine opened the floor for public remarks.

Ryan Jankovic, 6238 Pine Hallow Drive, a neighbor who spoke in favor of the fence for safety reasons.

Chair Beauchine closed public remarks.

Member Jackson asked staff if the 50 foot setback from the drain also applies to the surrounding houses.

Mr. Chapman stated it applies to all the houses in the area.

Member Ohlogge stated to Staff she knows her question is not in Staff's jurisdiction however, she asked Staff if they knew of a for the 50 foot setback, which the Ingham County Drain Commission (ICDC) has established.

Director Kieselbach replied the fifty foot setback is to keep structures away from the drain and around the outside drain easement. He added this allows the (ICDC) to maintain the drainage area. He stated the Township has a fifty foot setback requirement, along with the county drain easement making a total easement of 100 feet. He commented the Zoning Board of Appeals (ZBA) may have noticed the Township cannot grant the construction of a fence in the ICDC easement. If, the ZBA does grant the variance, a condition needs to be added that the applicant needs to get approval from the ICDC office for the fence in their easement area.

Member Jackson asked if the 50 foot setback is needed by ICDC for their maintenance vehicles.

Director Kieselbach replied yes, and the 50 foot easement is also used by the ICDC for placing sediment from the drain in that area also.

Member Jackson asked are you aware of a specific setback the ICDC requires.

Director Kieselbach stated he is not aware of any specific setback required by ICDC.

Ms. Tucker, the applicant, requested of the Chair to speak.

Chair Beauchine acknowledged Ms. Tucker and gave her the floor to address the ZBA.

Ms. Tucker stated she has already contacted ICDC, and although she has nothing in writing she spoke to staff, who stated they do not have a concern with the fence and she was told the easement for ICDC is 25 feet. She added we are requesting a 32 feet variance for the fence and perhaps common ground could be reached if the ZBA could at least grant a 25 foot variance that abuts the ICDC easement.

Chair Beauchine reminded the ZBA they are dealing with a corner lot with two front yards. He also referred to attachment number one of the packet stating the setting of the house is in a very tight location on the lot.

Member Ohlrogge requested of staff to show her on the plot plan, the dimensional area of the Township Ordinance only, with regards to the fence.

Director Kieselbach using the overhead projector indicated on the property lines the Township uses; he stated the fence could go right up to the property lines on all sides. He added the fence could not however be built into the road right-a-way due to clear sight distance, and it also could not block the visibility of the driveway or the intersection on the two streets. He commented the issue is with the 50 foot setback from the top of the bank for the fence. He added if there was no drainage ditch the fence could be placed on the property lines.

Chair Beauchine asked staff if the fence could be built on the 50 foot ICDC drain easement from the top of the hill since a fence is not considered a structure.

Director Kieselbach replied the setback is from the top of the bank. He added ZBA cannot authorize someone to build in another authority's easement or setbacks.

Chair Beauchine questioned could one build on the edge of ICDC easement.

Director Kieselbach answered one could build up to the ICDC drain easement, but then the fence falls into the Township setbacks.

Chair Beauchine stated the fence still has to be within our Ordinance setback and not within the ICDC setback. He read from Section 86-471(b)(4) stating all structures referenced in this section includes fences.

Director Kieselbach replied in our Ordinances anything that has a permanent or semi-permanent location on the ground is a structure. He said, if the ICDC drain was enclosed, it still would have the easement in place and the Township cannot suggest to the property owner to place a fence within that easement.

Chair Beauchine stated the ZBA is not talking about putting a fence in the ICDC easement, but next to their easement.

Director Kieselbach commented if the drain is enclosed and there still is an easement a property owner could build up to the easement line, but if a property owner wanted to go further into the easement, then permission from the ICDC to build a fence in their setback is required. He commented if the drain was not there, the property owner could put the fence all the way to their back property line. He reminded the ZBA they are dealing with the setback from the top of the bank, which is a 50 foot setback, and the applicator is asking to encroach into that area 35 foot.

Member Jackson asked staff does it mean the fence location drawn on the Plot Plan cannot be built there indicated.

Director Kieselbach replied if the ZBA grants the variance as indicated, then a condition would be added to the variance that the ICDC would need to give the applicant permission to allow the

fence in their easement. If the applicant's request fails with the ICDC, they may be back again before the ZBA with a different variance request.

MEMBER RIOS MOVED TO APPROVE THE VARIANCE REQUEST WITH THE CONDITION ICDC GIVES THE APPLICANT PERMISSION TO ENCOACH WITHIN THE 50 FOOT DRAIN EASEMENT.

SECONDED BY CHAIR BEAUCHINE.

Member Ohlrogge stated when reviewing the criteria, she does not see how the subject property is a unique situation, especially taking into consideration other properties in the same neighborhood with similar situations.

Member Lane stated he agreed with Member Ohlrogge. He can appreciate the effort the applicants have put into their presentation, however perhaps there are other locations for the pool and fence which should be consider that would fall within the setbacks of the Township Ordinance. He added in the previous case the ZBA was dealing with a garage which goes hand in hand with residential use however, a pool is more of an amenity and not a hardship.

Member Ohlrogge added the ZBA needs to consider the land or the structures on the property, and not how the land is going to be used. She added the minimum action does not apply either, in this case, since there are other locations on the subject property to build a fence which falls within our Ordinance guidelines.

Chair Beauchine replied I am glad we have a motion to work from, however when I look at this case my concern is the Ordinance is very clear when it comes to open drains and creeks. He added it seems a fence along the easement line would be reasonable and practical. He explained the motion as it stands is a variance to allow the applicant to request from ICDC permission for the fence to go into their 50 foot easement.

Member Ohlrogge commented she would read the review criteria, however she is not in favor of the motion.

Member Ohlrogge stated from the review criteria (Section 86-221), this case meets all the criteria for a variance request, and then read review criteria one, 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. She stated the subject property is not unique and not peculiar to the land or structures in the same zoning distract.

Member Ohlrogge read review criteria two, which states these special circumstances are not self-created. She commented if the applicant was to build a pool and fence then it is a self-created circumstance.

Member Ohlrogge read review criteria three, which reads strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. She replied there are no practical difficulties with other locations on the property to build a pool and add a fence.

Member Ohlrogge read review criteria four, which states 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 or would render conformity with such restrictions unnecessarily burdensome. She stated there is no problem with the home or having a fenced yard.

Member Ohlrogge referenced review criteria five, which reads 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. She replied the minimum action is where the applicant could work within the ordinances.

Member Ohlrogge read review criteria six, which reads granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. She commented putting a fence on the subject property could adversely affect adjacent land or property.

Member Ohlrogge read review criteria seven which reads the conditions pertaining to the land or structure are not so general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. She stated the Township Ordinance speaks directly to both corner lots and this particular water feature. Township Ordinance provides opportunity for the applicant to enjoy the subject property.

Member Ohlrogge read review criteria eight which reads granting the variance will be generally consistent with public interest, the purposes and intent of this Zoning Ordinance. She stated in this case the Zoning Ordinances do provide opportunities for the applicants to enjoy the subject site safely within the Township Ordinances.

Chair Beauchine offered one friendly amendment to the current motion if upon approval of the variance the ZBA will request the applicant to received formal approval from ICDC to construct a fence within the 100 foot drain easement.

MEMBER RIOS ACCEPTED THE FRIENDLY AMENDMENT TO REQUEST THE APPLICANT TO PROVIDE FORMAL APPROVAL FROM THE INGHAM COUNTY DRAIN COMMISSION TO CONSTRUCT A FENCE WITHIN THE 100 FOOT DRAIN EASEMENT.

SECONDERED APPROVED.

MEMBER OHLROGG MOVED TO APPROVE THE VARIANCE REQUEST SECTION 86-471(b)(1).

ROLL CALL VOTE: YES: Members, Rios, Jackson, and Chair Beauchine.
NO: Members Ohlrogge and Lane
Motion passed.

G. OTHER BUSINESS

None.

H. PUBLIC REMARKS

Opened and closed public remarks.

I. BOARD MEMBER COMMENTS

None.

J. ADJOURNMENT

Chair Beauchine adjourned the meeting at 7:27 p.m.

K. POST SCRIPT - Member Lane

Respectfully Submitted,

Rebekah Lemley
Recording Secretary