

CHARTER TOWNSHIP OF MONITOR
ZONING BOARD OF APPEALS
October 23, 2014

The meeting was called to order by Chairman J. Horen at 7:00 p.m.

Members present: J. Horen, D. Darland, , W. Sinke, T. Miller, J. Krueger
Members absent: J. Gwizdala
Also present: Attorneys Richard Austin, Amanda Doyle, and Jim Hammond
Also in Attendance Were: See Sign-in sheet.
Pledge of Allegiance recited.

Motion by W. Sinke seconded by D. Darland to adopt the agenda as presented.
Motion carried.

Motion by J. Krueger seconded by D. Darland to approve the minutes of September 18, 2014 as presented.
Motion carried.

Public Input

Public input was opened and closed at 7:04 p.m. with no one wishing to speak at this time.

New Business

Glashauser Front Yard Setback Continuance, 1002 Midland Rd., 09-100-021-300-240-01

J. Horen read the Public Notice for a request by Mr. Glashauser for a thirty-six (36) foot front yard variance for an addition to his store which would maintain the same setback as the existing building. A letter of support was also read from Brenda Anaman of 999 Midland Rd., Bay City, Michigan.

Mr. Glashauser explained the safety issue of needing to go outside in order to enter the shed where the cooler is kept for backstock of beverages. His desire is to square up the building and enclose the area where the fence now stands. The home next door is part of the same property and is not able to be split from this parcel.

D. Darland moved to approve a front yard variance of thirty-six (36) feet along the north line of parcel 09-100-021-300-240-01 also known as 1002 E. Midland Rd. for the purpose of allowing an addition on the east side of the existing building. This conforms to Sec. 18.10 of Ordinance 52 in that :

18.10a: "the extraordinary situation of the land or structure--the structure being only four (4) feet from the road right-of-way.

18.10b: The spirit of the ordinance is observed and substantial justice done.

18.10c: The situation is not so general or recurring in nature to require a change in the existing ordinance. Supported by J. Krueger.

Roll call vote:

Yes: Horen, Darland, Miller, Sinke, Krueger

No: None

Absent: Gwizdala

Motion carried to grant the variance.

Card Side Yard Setback continuance 4364 Mackinaw Rd., 9-100-016-400-040-05

Chairman Horen read the letter sent to residents concerning K. Card's arena variance request.

J. Krueger asked for interpretations for the correct side yard setback. The definition of "housing", "shelter", and "arena" were discussed. Whether the setback is 50' or 100' depends on the definition. Much discussion.

Attorney Austin noted that the first decision is whether this application is different from the original application that was denied. The legal opinion written September 15, 2014 was based on facts given to her by the supervisor which was that the only difference between the first and second applications was that the structure to be built was identified by a different name, which would have theoretically changed the setback requirements. Attorney Austin noted that in reviewing the second application it becomes clear that the proposed structure has been relocated on the applicant's parcel to be further from the side yard boundary line. Accordingly the second application is not a rehearing of the original application and should be considered by the Board.

The chair read the first application and the second application.

"Housing" is not defined in our zoning ordinance. Attorney Austin said that the zoning board will need to determine the definitions of "housing" and "shelter" in this instance and take into account the intent of the ordinance.

A variance and its conditions survive the transfer of ownership of the property.

D. DeGrow spoke on behalf of the Cards noting that the horses would not be eating or sleeping in the arena and, therefore, the setback for the building should be 50 feet from the property line. There are two other buildings in existence that are housing the horses now, so it isn't necessary to use the proposed building for housing.

He continued that the hardship to the property is that it is 60% floodplain and wetlands besides the illegal split of the property which was done in the 1970s.

Attorney Hammond believes that the proposed building is nothing more than a corral with a roof over it which does not house animals. He contends that an "arena" where you would go to watch competitions or exhibitions is probably neither permitted nor allowed by special use permit in this district.

Hammond also feels that there may have been some uncertainty at the June meeting about the Engle's south property line, the line between adjoining the Card's property. He feels that from September to June, we are talking about the same building and the same location on the property. The key issue is whether it is a building housing animals or whether it is a farm building which does not house farm animals. He believes that the correct ordinance provision is 5.04c and if the Board was using the wrong setback requirement at the June meeting, the Cards should have appealed to the Bay County Circuit Court instead of filing a new application. A Zoning Board of Appeals has no legal authority to grant a re-hearing. Is a Circuit judge going to see it for what it is--a second request for the exact same building in the same location?

K. Card said that she feels that there is a hardship to this property. She believes that she has a right to farm the back part of the acreage that has been hay for years. She believes that with a little TLC she will get a better yield next year than she got this year. . Except for the hayfield, there is not another spot for this building on the property. She felt that she was doing this the correct way.

Her intent for the arena is to ride and work her horses in the arena. She is in the process of looking for another show prospect. She typically rides for 1-1/2 hours, 5-7 days a week. At any one time there could be ten horses in the arena. The horses do not eat in this structure. She does not intend to stable horses in that building. She trains horses to sell. She also jumps horses and her horses are sixteen to seventeen hands tall so she needs the height to jump and the distance which is why the space is there. She also does dressage which is a 190 foot course.

Kristy Stecker of 5241 3 Mile Rd. is a friend of the Cards and shows horses as well. She feels that the way the Cards are trying to revitalize this property is a good thing for the Township.

Pam Evans of 4400 Mackinaw Rd. doesn't feel that the Cards are doing the right thing with the property. Since the buildings have not been used for horses for 12 months at a time, she doesn't feel that they should be allowed to have horses in them again and that the building should be built 100 feet from the property line.

Arlene Koenig of 4858 W. Westgate Dr. always went out to Pam Evans' to ride. She feels Kathy Card needs that space so she will be able to compete.

Michelle Kostraba from Saginaw County who has a horse farm spoke on behalf of horse people. The necessary work that is involved to exercise a horse to get in shape for competition in Michigan, especially with the winter we had last year, requires that they be worked year around. Competitions begin in March or April. You do not want to have to truck a horse back to the back of the property in the snow nor take it back through the snow when it is hot and sweaty. It sets the horse of for a lot of issues.

John Engel of 4400 Mackinaw Rd. says that wherever they put the building it will take up 1/3 of an acre. Something that is 200 feet long does not do justice to his property.

Charles Card said that they just want to do with their property what they purchased it for.

D. Darland said that if the buildings were moved back to the ridge, it would be taking away from the preservation of farm property.

J. Krueger feels that the request that was heard in June is a different one than was heard in September. One was for a 14 foot setback while the other was for 30 feet.

The Board is in agreement that this is a new application because of the re-location of the proposed structure. The issue now is an appropriate setback.

Discussion regarding "housing" to determine setback.

Krueger moved that the setback for the proposed building be 100 feet. There was no support.

D. Darland moved that, for the purpose for determining the variance, the language of Ordinance 52, Sec. 5.04 b(3) will be used which requires a fifty (50) foot setback. The application will be considered as an arena and not a structure which houses animals; that is, not feeding, sleeping, bathing or residing overnight. Seconded by J. Horen.

Roll call vote:

Yes: Darland, Miller, Sinke, Krueger, Horen

No: None

Absent: Gwizdala

Motion carried.

Mrs. Card has requested a variance of twenty (20) feet for a horse arena which would be located thirty (30) feet from the property line for 4364 Mackinaw Rd.

Discussion regarding the previous tabled motion of September 18, 2014.

J. Krueger noted that the topography of the property with wetlands and floodplain and the right to farm. Darland noted that the Master Plan wants to preserve as much farmland as possible. Horen noted the MSU Bulletin discussing preservation of the farm property.

Board discussion regarding moving the barn over and encroaching on either the septic field or wetlands.

Mr. Hammond proffered his argument that with 22.8 acres it would be difficult to say that the Cards could not make use of their property without a variance. Is the location of the septic field a self-created hardship?

Mrs. Card asked the Health Department to scrape off the old septic field to see if it could be used and it had been done incorrectly. The Health Department approved the only area that they felt would work as a septic field.

Dave DeGrow required the Cards to establish a flood plain elevation before getting a building permit for their house. The property is 60% floodplain so to say that there are 22 usable acres, that is incorrect.

Based on the findings that the Master Plan includes the preservation of agricultural property; the rear acreage of the parcel is better suited for agriculture than development; the 30 foot separation of the structure and the neighbor's lot line will be sufficient and not cause undue hardship; D. Darland moved to approve a side yard variance of 20 feet (setback of 30 feet) along the south line of parcel 09-100-016-400-040-05 for the purpose of allowing an indoor horse training arena and not to house animals or storage, but solely for agricultural use. This variance conforms to Section 18.10 of Ordinance 52 in that:

- a) The topography conditions (+/- 60% floodplain and wetlands) and the use of the immediately adjoining property to the south;**
- b) The spirit of the ordinance is met and substantial justice is done;**
- c) The property situation is not a general reoccurrence and the variance sought is not so general or recurrent in nature as to make practicable the formulation of a general regulation for such conditions or situations in the ordinance. Seconded by Sinke.**

Roll call vote:

Yes: Miller, Sinke, Krueger, Horen, Darland

No: None

Absent: Gwizdala

Motion carried to approve a twenty foot variance under Sec 5.04b(3) of Ordinance 52 .

Mr. Austin answered Mr. Hammond's question regarding when building could commence by saying that Mrs. Card would be able to begin to build tomorrow if she wished. She does not need to wait until the minutes are approved next month.

Communications

T. Miller moved supported by D. Darland to accept Communications. Motion carried.

Attorney Rick Austin introduced Amanda Doyle to the Board.

D. Darland moved to adjourn with T. Miller support.

The meeting was adjourned at 9:40 p.m.

Respectfully,

Terry Miller
Secretary