



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

6880 DEXTER-PINCKNEY ROAD
DEXTER, MI 48130

TELEPHONE: 734-426-3767
FAX: 734-426-3833

WWW.DEXTERTOWNSHIP.ORG

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VICE CHAIRPERSON
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JANIS MILLER
RECORDING SECRETARY

REGULAR MEETING MINUTES OF THE ZONING BOARD OF APPEALS

Tuesday March 7, 2017

Members present: Chairperson Brook Smith, Vice-Chairperson Beth Filip, James Drolett, and Bill Gajewski. Absent: Secretary Jay Holland

Also present: Zach Michels, Director of Planning and Zoning (DPZ), and Janis Miller, Recording Secretary.

- I. **Call to Order:** The meeting was called to order by Chairperson Smith at 6:05 p.m.
- II. **Pledge of Allegiance:** Chairperson Smith led the Pledge of Allegiance to the Flag.
- III. **Approval of Agenda:**
After board input, Chairperson Smith accepted the agenda as submitted. Drolett was appointed acting secretary in the absence of Holland.
- IV. **Public Comment- Non Agenda Items:**
Helen Karns 9102 McGregor Pinckney, MI
Looking for relief, or ordinance wavier, to allow the motor home to continue to be parked on their Lake Residential property. Mrs. Karns explained that due to her husband's extensive medical needs, the motor home is their method of transportation to medical appointments, family gatherings, and athletic events.
DPZ Michels responded that this was a Zoning Ordinance Review and/or Zoning Board of Appeals issue.
Drolett stated she had been to the Zoning Ordinance Review Committee meeting and was instructed to come to the ZBA for appeal.
Smith said this should be addressed more globally through ordinance modification.
DPZ Michels stated the new ordinance is more lenient but has not been approved by the Zoning Board of Appeals, and the Township Board has not seen the new ordinance.
- V. **Action Items:**
 - Item #1:
 1. **Election of Officers:**
Moved by Drolett, seconded by Gajewski, to maintain the current slate of officers for the year 2017. **Motion carried by voice vote.**

2017 ZBA Officers: Chairperson: Brook Smith
 Vice-Chairperson: Beth Filip
 Secretary: Jay Holland

Item #2:

1. Introduction of the case:

Action Item: # 2
Appeal Number: <u>(17-ZBA-824) Maynard</u>
Applicant Name(s): Carl and Regina Maynard
Property Tax ID: (D-04-29-231-039)
Address: 13381 Oakridge, Chelsea, MI
Purpose of Variance Request: <i>Reduced lot area of one point six (1.6) acres rather than the two point five (2.5) acres required for the keeping of a goat.</i>

2. Report from the Director of Planning & Zoning:

Staff report, dated March 7th 2017, summarized by DPZ Michels. DPZ Michels also noticed the applicant that due to one member missing from the ZBA Board, they could postpone the variance hearing up until the Board deliberations.

3. Zoning Board of Appeals Q & A with the Director of Planning & Zoning:

Drolet: The Zoning Ordinance, as currently written states: “This Board is not authorized to grant any use, not otherwise permitted, in the zoning district”. The Article concerning this variance says “The keeping of livestock, or other animals, may be conducted as an accessory to the principal residence, except in platted subdivisions and condonumims”. Do we have the authority to grant this variance because it is specifically prohibited in the Zoning Ordinance?

DPZ Michels: There is no prohibition in platted subdivisions for keeping of livestock. The draft Zoning Ordinance is proposing less area for a goat, but it hasn’t been adopted yet. Historically, this body has view the lot area as a developmental standard.

Smith: Aren’t there two issues here? If we treat lot area as a developmental standard, the lot area here is acceptable. How do we deal with the fact that the Ordinance says you can’t have a goat in a platted subdivision, without that requiring the use variance?

Gajewski: We can grant dimensional variances, but we cannot grant use variances. I agree, this is a lot dimensional issue.

DPZ Michels: If there is a concern, and I don’t have a firm response to the concern raised, does the applicant want to wait until I can consult the Township Attorney?

Smith: After hearing this conversation, and whether or not we have the authority to do this, does the applicant want to postpone until the next meeting? We are a person short on the Board, and there is a potential legal issue, would you like to postpone?

Carl Maynard: We will be out of town for the April meeting. We can postpone until the May 2nd, ZBA meeting.

Filip: The draft ordinance proposes a minimum lot area of two acres per goat, but does not distinguish between goats of traditional size (up to 160 pounds) versus goats of these smaller dwarf sizes (much smaller than a regular dog). Maybe clarification can be made prior to the next meeting.

DPZ Michels: The Planning Commission will be taking a look at this.

Moved by Filip, seconded by Gajewski, to postpone (17-ZBA-824) Maynard, until May 2, 2017.

Drolet: The job of interpreting this ordinance is ours, and we’re asking someone else (Township Attorney) to interpret it for us. The ordinance language is quite clear.

Smith: We're looking for input, and another two months for the possibility of improvement in the ordinance.

Roll Call Vote: Yeas – Filip & Smith: Nays – Drolett & Gajewski: Absent – Holland.

Smith: We will proceed this evening.

Drolett: We will proceed on the petition, which is not asking if we have the authority to do it or not, the petition is asking for a reduction in the lot size required for livestock, which applies to all the residential and agricultural districts except platted subdivisions and site condominiums. The Ordinance specifically states livestock are not allowed in platted subs. We can't grant a variance for a use that's not permitted in the district. I think we're in a position that we have to take a vote on that.

Gajewski: Zach, in a platted sub, is there a way to circumvent that in the final motion?

DPZ Michels: The legal question is whether or not it is a use variance. A use variance is whether or not it is allowed in the zoning district. Animal husbandry is not allowed in all the zoning districts. Referenced Article 18, §18.17.

Drolett: How do we proceed if we don't have the authority to proceed?

DPZ Michels: I haven't had a chance to make a full interpretation of this. This is a request for a variance, not an appeal of the DPZ's decision.

Gajewski: To grant a variance there has to be a practical difficulty and personally I can see one. If we grant the variance, it isn't precedence setting that it would open the door for other platted subdivisions?

DPZ Michels: What would be precedence setting would be the interpretation or appeal process. Variances are not precedence setting.

Moved by Drolett, seconded by Filip, to reconsider the previous motion.

Motion carried by voice vote.

Re-vote on previous motion to postpone (17-ZBA-824) Maynard, until May 2, 2017.

Roll Call Vote: Yeas – Drolett, Filip, Gajewski, & Smith: Nays – None: Absent – Holland. Motion carried 4-0.

DPZ Michels told the audience that they were here and heard the postponement date so there would not be a second notice sent out.

Item #3:

1. Introduction of the case:

Action Item: # 2
Appeal Number: (17-ZBA-825ABC) VerBurg
Applicant Name(s): VerBurg Family Trust
Property Tax ID: (D-04-02-175-021, D-02-02-102-004/005)
Address: 9864 Winston Pinckney, MI
Purpose of Variance Request: A) Reduced waterbody setback of twelve (12) feet rather than the thirty-five (35) feet required for an at-grade deck or patio; B) Reduced waterbody setback of fifteen (15) feet rather than the thirty-five feet (35) required for an at-grade deck or patio; and C) Reduced waterbody setback of eight point five (8.5) feet rather than the fifty (50) feet required for an accessory structure.

2. Report from the Director of Planning & Zoning:

DPZ Michels summarized the Staff report, dated March 7, 2017, noting all the variances were for waterbody setbacks. .

3. Zoning Board of Appeals Q & A with the Director of Planning & Zoning:

Filip: A hot tub is not counted as impervious coverage?

DPZ Michels: Pools don't count as impervious coverage. A deck around the pool, or concrete, would count as impervious coverage.

Drolett: They want the patio out by the lake side but they have the hot tub on the canal side?

Gajewski: Decks, patios and the amenities that go with them are part of lake living. Is a hot tub really a detached accessory structure?

DPZ Michels: It does meet the definition for an accessory structure but not for an accessory building.

Gajewski: The steps are for safety? Is there a door?

DP Michels: There are two sliding doors, the steps are for convenience.

Drolett: There are three property id's. Are the variances for the house tax id (D-04-02-175-021)? We're not talking lot coverage, or anything like that?

DPZ Michels: Yes, it is for the house id. The reason we put them all together is we want to establish a record that these properties were bound at some point in time.

4. Applicant presentation and Q&A with the Zoning Board pf Appeals:

Bruce VerBurg: The steps on the west (canal) side are under the roof line. The hot tub is on the canal side as it is less intrusive, keeping more things away from the lakefront. There will be landscaping on two sides of the hot tub, street side and canal side.

Gajewski: What are you proposing for pavers?

Bruce VerBurg: Permeable pavers.

Gajewski: Zach, does this require an engineering review?

DPZ Michels: It's something we're looking at. If it's not installed properly, it might as well be concrete. We're asking the township engineer to look at it to make sure it was installed properly.

Drolett: Is there an enclosure around the hot tub?

Bruce VerBurg: Landscaping on two sides for privacy.

DPZ Michels: The building code requires either a fence that's four foot high, or a cover that meets ATSM Standards.

Smith: You already have a variance that allows you to come within 15.1 (fifteen point one) feet of the water. This request is essentially to come 3.1 (three point one) feet closer to the water than your present variance would allow.

DPZ Michels: The way our Zoning Ordinance has been interpreted is that if you're building a new structure, the minimum setbacks apply to that new structure, which is a little bit different than the hot tub. There are required yards and there are required water front yard setbacks. For a patio it's 35 (thirty-five) feet and for a structure it's 50 (fifty) feet from the water. Our Zoning Ordinance says you cannot put an accessory building in the front yard.

Bruce VerBurg: The house does not take up that whole 15.1 (fifteen point one) feet.

Smith: You could put this hot tub over on the side with the patio?

Bruce VerBurg: We thought we'd put it on the side for privacy and for what was viewed from the lake.

5. Open Public Hearing on agenda item: 6:53 p.m.

- a. Reading of letters into the record: two letters received
- b. Comments from public in attendance: none

6. Close Public Hearing on agenda item: 6:54 p.m.

7. Zoning Board of Appeals deliberations and Standards of Review:

Gajewski: With the location of the hot tub on the east side, versus being on the patio, Zach, do you see any disadvantage to it not being on the permeable pavers?

DPZ Michels: No.

Filip: Is there any access to the canal?

DPZ Michels: It's not deep, not accessible with a boat. It's considered a waterbody because it has water in it. The waterbody setbacks are a little bit different from the side-yard setbacks where we're concerned about access around and the building-to-building access.

Smith: My concern is, in order to grant variances you have to see if there aren't other ways you could accomplish your goal.

Filip: It goes back to the practical difficulty.

Gajewski: The practical difficulty on that lot is the preexisting condition that there are two water body setbacks.

Smith: Could the home be used without the setback variance for the hot tub, could it be practically used without that set back variance?

Gajewski: You have to look at the intent of the setback variance. Is the spirit of the law being upheld? If they are putting in a storm water management system, then they are significantly improving the quality of the lake. Where they put the hot tub doesn't make a difference to me. It is significantly less intrusive if they put it off to the side,

Drolett: My concern is, we're not just looking at the hot tub sitting there. There is significant screening around it. I don't know why it couldn't go on the patio, it's a large patio, offering privacy from the road. It's a small lot, and the house was built on that lot a long time ago.

Gajewski: There is practical difficulty. Allowing a deck or patio is part of lake living, and substantial justice would be served with the patio. Part of the amenities is the hot tub.

Smith: My view is, the step is a safety issue. The at-grade, permeable pavers are no closer to the waterbody than the neighbors to the east. I do have a problem with the hot tub meeting the requirements for a variance, since it could be placed elsewhere.

DPZ Michels: Would they like to postpone until there are five members seated?

Bruce VerBurg: If it's a matter of putting the hot tub on the pavers, could we get approval of the other variances?

Smith: We can approve one or all three tonight.

Drolett: We're going to have a difficult time finding a practical difficulty why the hot tub has to be there on the side of the house, when it could be placed without a variance.

Gajewski: I like the hot tub on the side of the house, it's less intrusive and you're only seeing it from one direction.

Bruce VerBurg: We've decided we want to proceed.

(1) Practical Difficulty 4.30(C)(1) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water: Patio	18.18(C)(1) Water: Steps	18.18(C)(2)ai Water: Hot Tub
The strict application of the terms of this Ordinance would constitute a practical difficulty.	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Filip Gajewski
<u>DPZ Comment:</u> It appears possible to continue to use the property without the requested variances. The proposed patio appears generally consistent with the expectations for use of lakefront properties. It does not appear necessary to have two sets of stairs to the waterfront yards. It appears possible to place the hot tub on the patio in a location that would not require a variance.			
Notes: Filip – Due to the size of the lot and the fact that the lot was drawn up before the Zoning Ordinance of 2003 was put in place.	<u>NO</u> None	<u>NO</u> None	<u>NO</u> Drolett Smith

(2) Physical Conditions 4.30(C)(2) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
The practical difficulty is due to some physical condition peculiar to the property involved.	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Filip Gajewski
<u>DPZ Comment:</u> The waterfront lot is generally similar in size to surrounding properties, but it is surrounded on two sides by water, resulting in multiple front (waterfront) yards and larger setbacks. The location of the existing house appears to make it difficult or impossible to place a waterfront patio to the south of the house while meeting the developmental standards of the Zoning Ordinance.			
Notes: Gajewski – The practical difficulty is the preexisting condition of the house on the lot, and surrounded by water on three sides.	<u>NO</u> None	<u>NO</u> None	<u>NO</u> Drolett Smith

(3) Self-Created 4.30(C)(3) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
The practical difficulty is not self-created.	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Drolett Filip Gajewski Smith	<u>YES</u> Drolett Filip Gajewski Smith
<u>DPZ Comment:</u> The applicants do not appear to be responsible for the size or configuration of the property or the location or size of the house.			
Notes: Smith – Clearly they had nothing to do with creating this situation.	<u>NO</u> None	<u>NO</u> None	<u>NO</u> None

(4) Reasonable Amount Necessary 4.30(C)(4) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
The variance is a reasonable amount necessary to mitigate the practical difficulty.	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith	YES Gajewski
<i>DPZ Comment: The size of the proposed patio, roughly 14 feet deep, appears to be appropriately-scaled for the property and the surrounding area. The proposed steps are of a limited size, but they do not appear to be necessary. The proposed location for the hot tub is relatively close to the house, but there appear to be locations on the waterfront lot where the hot tub could be placed without requiring a variance.</i>	NO None	NO None	NO Drolett Filip Smith
Notes: Gajewski – Allowing a deck, or patio, is part of lake living and therefore substantial justice would be served. Smith – I think they can put the hot tub somewhere else.			

(5) Public Health, Safety, and Welfare 4.30(C)(5) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
Approval of the variance will not be injurious to the public health, safety, and welfare.	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith
<i>DPZ Comment: The requested variances do not appear to be injurious to the public health, safety, or welfare if the improvements are installed</i>			
Notes:	NO None	NO None	NO None

(6) Adverse Effect 4.30(C)(6) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
Approval of the variance will not affect the use or value of the adjacent properties or the area in a substantially adverse manner.	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith
<i>DPZ Comment: It does not appear that the proposed improvements will have a negative impact on lake views of the adjacent properties. The proposed location for the hot tub may have an impact on those using the canal, such as canoers or kayakers.</i>			
Notes: Gajewski – It will improve the value of the adjacent properties.	NO None	NO None	NO None

(7) Intent of the Ordinance 4.30(C)(7) Does the requested variance meet the following standard:	A	B	C
	18.18(C)(1) Water- Patio	18.18(C)(1) Water- Steps	18.18(C)(2)ai Water- Hot Tub
Approval of the variance is consistent with the intent and purpose of this Ordinance.	YES Drolett Filip Gajewski Smith	YES Drolett Filip Gajewski Smith	YES Gajewski
<i>DPZ Comment: The intent and purpose of waterbody setbacks are to prevent overcrowding, protect water quality, and protect the use and enjoyment of the surrounding properties. The requested variance for the patio appears to be consistent with the intent to allow for residential use of property in a manner that is enjoyed by surrounding properties without generating negative externalities.</i>			
Notes: Gajewski – A permeable paver system, or storm water management system, will help protect lake water quality.	NO None	NO None	NO Drolett Filip Smith

8. Motions by the Zoning Board of Appeals:

Moved by Filip, seconded by Gajewski, with regard to petition (17-ZBA-825ABC) VerBurg, tax id (D-04-02-175-021, D-02-02-102-004/005), located at 9864 Winston, Pinckney, MI; approving variances **A) Reduced waterbody setback of twelve (12) feet** rather than the thirty-five (35) feet required for an at-grade deck or patio; **B) Reduced waterbody setback of fifteen (15) feet** rather than the thirty-five feet (35) required for an at-grade deck or patio; and denying **C) Reduced waterbody setback of eight point five (8.5) feet** rather than the fifty (50) feet required for an accessory structure; recognizing the nonconformities as stated on pages 3-3 and 3-4 of the staff report, and setting the condition that the patio shall be installed with pervious materials, including the finished patio and base materials, and be inspected and approved by the Township Engineer..

Roll Call Vote: Yeas- Drolett, Filip, Gajewski, Smith: Nays -None: Abstain - None: Absent – Holland. Motion carried 4-0.

VI. Public Comment – None

VII. Approval of Meeting Minutes:

Moved by Drolett, seconded by Filip, to approve the minutes of the October 19, 2016 meeting as submitted. **Motion carried by voice vote.**

Moved by Gajewski, seconded by Filip, to approve the minutes of the November 10, 2016, meeting as submitted. **Motion carried by voice vote.**

VIII. Concerns of Board Members, Director of Planning and Zoning, Recording Secretary:

1. Filip - Why is a platted subdivision a nonconformity? Drolett – It was platted before the Zoning Ordinance. DPZ Michels – It was platted with 1 acre lots so it is legally nonconforming.
2. Filip – Regarding chickens, as we’re talking about livestock and the Zoning Ordinance says “large livestock”. I would like to see some guidance from the Planning Commission. DPZ Michels – In 1973, when the ordinance was written, the only livestock was on farms. Site condominium associations can say differently.
3. Recording Secretary, Miller – Due to the new recording system, the Planning Commission has opted to eliminate the narrative from their minutes. Would the ZBA Board like to omit the narrative from future minutes? DPZ Michels – The State of Michigan Library of Records says we have to keep the electronic copy one day after the minutes are approved, and then we can delete it. It doesn’t cost the Township any more to archive it as we pay a yearly fee. Smith – We need it for the legality. Drolett – All we need is who, why, what, when and where.
4. DPZ Michels – No ZBA meeting in April. May meeting the ZBA will address two variance requests. March 14th the Township will host a joint training on parliamentary procedure.

IX. Adjournment

Chairperson Smith declared the meeting adjourned at 7:33 p.m.

Respectfully submitted,

Jay Holland, Secretary

Janis Miller, Recording Secretary