

ISABELLA COUNTY
ZONING BOARD OF APPEALS
May 21, 2008

Room 225
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held May 21, 2008 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Craig Schripsema, Gordon Gilchrist, Kelly Bean, Howard Shively.

MEMBERS ABSENT: None.

SUPPORT STAFF PRESENT: Timothy Nieporte, Community Development Director
Mike Zalewski, Planner/Zoning Administrator
Brandy Freed, Recording Secretary

The meeting was called to order by the chair at 9:00 a.m.

The Pledge of Allegiance was recited by the board.

APPROVAL OF AGENDA

The agenda was approved as submitted.

PREVIOUS MINUTES

The minutes of the April 16, 2008 meeting were approved as submitted.

PUBLIC COMMENTS

None heard.

VARIANCE REQUEST #08-03

Mr. Zalewski explained that Mike Schafer is requesting a variance to create a 2.93 acre parcel that exceeds a depth of 400'. The Zoning Ordinance limits the depth of a newly created parcel to 400' in the AG-1 District when the parent parcel is comprised of 75% or more of the major agricultural soils. The property is located at 3275 W. Jordan Road in Section 33 of Nottawa Township. Parcel # 11-033-20-001-01.

The parcel is a 29 acre piece of property zoned AG-1 and is comprised of 100% of the major agricultural soils. The applicant would like to split off 2.93 acres to include the house and existing pole barn. However, to split the property and meet the 35' rear setback for the pole

barn to the new property line, the property would have to be 510' deep. The maximum depth for a parcel comprised of 75% or more of the agricultural soils is 400'. The intent of the maximum 400' depth requirement and 3 acre maximum lot size is to preserve the agricultural land. Based on the site plan submitted with the aerial imagery, the new split would not necessarily be taken any new land out of agricultural use. The existing home and barn were set on the property that best suited the owner at the time. The horse barn is set back from the house near the side property line. If the barn had been constructed west of the house, the owner could have split a 510' wide lot that is 250' deep and meet the requirements of the ordinance. The applicant is requesting to create that same size parcel just in a different manner and still keep in tact the larger remaining 26 acre parcel.

Mr. Michael Schafer stated the pole barn is used for animals and was built farther back because he didn't want the animals near the backyard pool. He stated that he will still stay within the 3 acre limit. If this property is ever sold he doesn't want to split the pole barn and house up.

The public hearing was opened at 9:04 a.m. No public comment received. The public hearing was closed at 9:05 a.m.

Mr. Gilchrist stated that this would make wise use of the property. Adding depth will provide for the decreased width, with no problems in the front and side yard.

Mr. Schripsema stated that this variance request meets the intent of the ordinance and it is minimal.

Mr. Nieporte stated that 400' and three acres is required by the ordinance in an agricultural district to preserve agricultural land. The majority of that parcel is not eating up much agricultural lands or additional soils.

Mr. Shively stated that he did not see anything that would be violated if they were to grant the variance today.

Mr. Bean stated that this variance does not interfere with the agricultural land.

A motion was made by Mr. Bean, supported by Mr. Gilchrist to approve variance request #08-03 based on the following:

- The site plan submitted
- It minimizes the impact on the farmland and does not reduce the existing agricultural use of the parent parcel as it exists today
- It will be granting the minimum variance
- The barn is back far enough so they can't fall within the 400', to get a good split based on the existing layout of the homestead.

Yes: Gilchrist, Schripsema, Wynes, Bean, Shively No: None

Variance approved.

VARIANCE REQUEST #08-04

Mr. Zalewski explained that Loren & Julie Cole are requesting a variance to allow a 32'x 40' residential addition to remain 0' from the front lot line. The required front setback for this structure is 3' as permitted with variance permit #94-9. The property is located at 1050 Okray Street in Section 20 of Vernon Township. Parcel #15-100-00-011-00

On June 15, 1994 Robert Hoffman obtained a variance to construct a 32'x 40' attached garage 3' from the front lot line (road right of way). The ZBA justified the granting of the variance because the proposed activity is consistent with what exists in the area, the proposed activity creates no concerns for safety and the problem is not self created because there is no other location in which to place the proposed building. Mr. Hoffman proceeded to construct the building. In 2005, Mr. Hoffman sold the property to Loren and Julie Cole. In November 2006 our office received a complaint from the neighbors regarding the property being rented out for parties and local events as well as insufficient parking on the property. Our office investigated the complaint and determined that the owners have had family stay at the house as well have had people from their church over to go swimming, etc... The property also met the parking requirements for a single family dwelling. Thus there was no zoning violation and our office closed the complaint file. In May 2007 our office received another complaint from the neighbor. This time the complaint was regarding the accessory building that was constructed in 1994. The neighbor had the right of way of Okray Street surveyed and it indicated that the accessory building is constructed on the property line and not 3' from the line as permitted with the variance.

Our office contacted the Cole's regarding the situation and advised them of their options. The Cole's have spoken with the Road Commission regarding abandoning part of the right of way in front of their house, but were unsuccessful. Okray Street was abandoned in front of the neighbor's lots (13 & 14) in 2006 and is only used to access the Coles lots and the neighbor's lots. This request is unique in the fact that the variance request is from the 3' front setback. The previous owner was granted the 3' variance request and therefore the setback is 3'. The only part in question is the front 3' of the building. It is also unique in the fact that this right of way only serves the Cole's property and the neighbor's property and as a matter of fact since the original variance request, the right of way was abandoned in front of the neighbor's property. The right of way now ends at the Cole's East property line. The Road Commission has submitted a letter stating that 'the structure poses no significant impact to the maintenance of the roadway'. Please note that the property also has a 22'x 24 garage approximately 1.4' from the front lot line. This structure is a legal non-conforming structure. We have also received a letter from Vernon Township stating that the Vernon Township Board has 'no issue with the approval of the subject variance request'.

Mr. Loren Cole stated that the neighbor had hired a survey company to survey the properties. The survey company determined that their garage was too close to the county right of way. The variance is being requested because they would like to keep the existing garage where it is.

The public hearing was opened at 9:20 a.m.

Ms. Jan Hoffman stated that her and her husband had built the garage. When the garage was built all the necessary permits were received and everything was alright then. The garage was built legally.

The public hearing was closed at 9:21 a.m.

Mr. Bean asked that the applicant applied for the original variance in 1994 and was approved was the survey off at that time?

Mr. Nieporte stated that a survey is not required when applying for a variance. The applicant is to determine where the property line is, if it is determined in the wrong spot the property owner is liable for that.

Mr. Cole stated that the road was originally 50' wide. From the center of the road over, is the survey that was done. The neighbors were able to get their right of way abandon. The county would not abandon ours because they wanted to be able to turn their trucks around at the end of the road.

Mr. Nieporte asked the applicant if he was in agreement with the survey that was conducted.

Mr. Coles stated that he was in agreement with the survey.

Mr. Gilchrist asked if the survey was registered. He asked if the Coles gave permission to let the surveyor survey their property.

Mr. Cole stated that he was unsure if the survey was registered. He also stated that he did not give the surveyor permission to survey his property.

Mr. Gilchrist asked what type of parties are thrown on the property

Mr. Cole explained that they are church events for the worship team and their families every Fourth of July, as well as other church functions.

Mr. Gilchrist asked if they have ever blocked the neighbor's driveway.

Mr. Cole stated that the neighbor's driveway has never been blocked, but the neighbor has created scenarios to make it look like as though they can not get in their driveway.

Discussion was held on adverse possession and grandfathering of the property.

Mr. Bean stated that since 1994 there have been other background issues. The issue was brought to this board because the road commission has given up the right of way to everyone but the Coles, because the County needs to be able to turn their trucks around. It would be unreasonable to make the owner tear the building down; it has been there for 14 years without a problem.

Mr. Nieporte stated that this board has required other applicants to move or tear down buildings before.

Mr. Zalewski read letters from the Vernon Township board and Mr. Tony Casali, Isabella County Road Commission Manager into the record.

Mr. Schripsema asked if the variance request is granted for the setback and the garage is torn down would it go back to its original zoning setback.

Mr. Nieporte explained that it have to meet the current setback

A motion was made by Mr. Schripsema, supported by Mr. Bean to approve variance request #08-04 based on the following:

- The right of way is not impeded and it is a dead end road
- Current owner didn't create the issue, it was already existing
- Denial would deprive the owners of rights that are commonly enjoyed by others
- Granting the variance gives no special privileges to the property owner

Yes: Gilchrist, Schripsema, Wynes, Bean, Shively

No: None.

Variance approved.

VARIANCE REQUEST #08-05

Mr. Zalewski explained that Terry Masse is requesting an 8' variance from the 8' high fence requirement of Section 12.05(II) of the Isabella County Zoning Ordinance. The request would allow for no fencing to be required on the East side of the business located at 10532 N. Mission Road in Section 11 of Vernon Township. Parcel # 15-011-10-003-01

As you recall, the previous owner of this site, Neil Masse requested an 8' variance from the 8' high fence requirement in variance #06-12. This request was for the fence around the entire development. The ZBA denied this request. Mr. Masse proceeded to file suit against the ZBA in Circuit Court. That decision of the ZBA was upheld and the owner was ordered to put up the fence. After failing to do so, the Planning Commission took action to revoke the special use permit. The new owner, Terry Masse subsequently applied for and obtained a new special use permit. A condition of that permit was to construct an 8' fence around the periphery of the site with the provision that the fence had to be constructed on the North, South and West side of the development prior to opening of business. The fence on the East side of the property would not

have to be constructed immediately to allow the owner time to apply for a variance from the 8' fence requirement. If the variance request is denied, the owner is required to immediately install the fence. Again, staff has visited the site and would encourage the board members to do so as well.

Mr. Michael Hackett stated that the applicant is different from Neil Masse. This property was first used as a John Deere dealership and is now being used as an auto auction. The special use permit allows for a salvage yard, which needs to be screened. This auto auction is only selling cars, it is not unsightly. This is a special situation; they are only using the front half, 625', of the property for the auto auction. The back of the property that is owned is a hayfield. Essentially they would be screening the property from itself. One of the neighboring properties has a junk yard; the auto auction has been screened from this property as well as the Crawford farm. It shouldn't be necessary to screen the property to the east because it is its own neighbor.

Mr. Shively stated that he would have to abstain from this case because in the past he has had two terms of employment for Mr. Masse, one as a truck driver and one as lot worker on the site. He further explained that he has a friendship with Neil Masse, his Dad, and Jackie Wisel, and he doesn't feel that he could make an impartial decision in this case.

Mr. Gilchrist stated that he would complement the business on the fence that they have put up and extended past anything on Crawford farm. He asked if the Planning Commission had discussed screening.

Mr. Schripsema stated that they had discussed it. There is County Drain that runs through the property; this would serve as a natural screen.

Mr. Nieporte stated that using the drainage ditch as screening would have to be conditioned because the Drain Commission could be petitioned to clear the ditch. He also stated that he did not agree that they are screening the property from itself. This property can be seen clearly from U.S. 127. As well it can be seen from other properties, but those are agricultural properties.

Discussion was held on why an auto auction was categorized as a salvage yard.

The public hearing was opened at 9:58 a.m.

Christine Alwood, Isabella County Commissioner and Planning Commission member, stated that she supported granting this variance because it is a wasteful use of money to have to screen from U.S. 127

Mr. Nieporte explained that the ZBA has to follow the criteria that are in place.

The public hearing was closed at 10:02 a.m.

A motion was made by Mr. Gilchrist, supported by Mr. Schripsema to approve variance request #08-05 based on the following:

- There is no hindrance to the land or the neighbors

- The intent of the ordinance has been met by the fence that has already been installed
- It does not create any safety issues of any kind
- Applicant has demonstrated they meet the standards in Section 14.04(C) of the Isabella County Zoning Ordinance

Yes: Gilchrist, Schripsema, Wynes, Bean.

No: None.

Abstain: Shively

STAFF COMMENTS

Mr. Zalewski welcomed new member Mr. Howard Shively.

BOARD COMMENTS

Mr. Wynes asked if there has to be more in their motions in case they have to go to court.

Mr. Zalewski explained that board members can pre-draft their motions based on what they have received in their packets. Then when they come to the meeting they can change that pre-drafted motion based on the information they receive from the public and the applicant.

Mr. Wynes stated that when a motion is made the board needs to be sure that everything is included in it.

Discussion was held on what the applicants need to address when in front of the board.

ADJOURNMENT

A motion was made by Mr. Gilchrist, supported by Mr. Schripsema, to adjourn at 10:04 a.m.

Yes: Schripsema, Gilchrist, Wynes, Bean, Shively.

No: None.

Motion carried.

Craig Schripsema, Secretary

Brandy Freed, Recording Secretary