

ISABELLA COUNTY
ZONING BOARD OF APPEALS
April 15, 2009

Room 225
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held April 15, 2009 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Gordon Gilchrist, Howard Shively, Kelly Bean, Bob Thompson.

MEMBERS ABSENT: None.

SUPPORT STAFF PRESENT: Mike Zalewski, Planner/Zoning Administrator
Brandy Harger, 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

A motion was made by Mr. Gilchrist, supported by Mr. Thompson, to approve the minutes of March 18, 2009 meeting as submitted.

Yes: Bean, Thompson, Shively, Gilchrist, Wynes

No: None

Motion carried.

PUBLIC COMMENTS

None heard.

VARIANCE REQUEST #09-01

Mr. Zalewski explained that Johnathan Miller is requesting a variance to be able to apply for an Excavation Transportation Services business on 41 acres in the General Agriculture District (AG-2). The maximum lot size in the AG-2 district for this type of use is 5 acres. Mr. Miller is also requesting variances to allow the equipment used in the operation to enter and exit the property

in a driveway that is 30' and 65' from the adjacent residences. The minimum setback for the driveway is 100' from an adjacent residence. The property is located at 9801 N. Green Road in Section 18 of Vernon Township. Mr. Miller constructed the 60' x 100' building on his property without permits. He was notified by our office to obtain the necessary permits. Upon application it was determined that the use of the building was going to be an excavation-transportation service business as defined in the zoning ordinance. Mr. Miller was advised of this and the fact that he would have to apply for a special use permit. In reviewing the additional requirements for excavation transportation business in section 12.05(N) of the Zoning Ordinance it was determined that the application would not meet the maximum lot size requirement as well as the minimum driveway setback for the entrance of the business to adjacent residences. Section 12.05 (N)(2) states all heavy equipment used in the operation shall enter and exit the property in driveways located no less than 100 feet from an adjacent residence. As noted on the site plan and the enclosed map, the driveway to the proposed business travels up between two parcels and is only 30' from the one residence and 65' from the other residence. Thus he is requesting the variance from the 100' requirement. Section 12.05 (N)(6) states the maximum lot size shall be 5 acres in all agricultural districts. Since this property is 41 acres in size, the applicant is requesting a variance from the maximum lot size requirement.

Mr. Miller stated that when he constructed the building he didn't think that he needed any permits because the building was to be used mostly for agriculture, then realized he would need a zoning permit and has since gone thru the proper channels.

The public hearing was opened at 9:07 a.m.

Mr. James Michael stated that he is the owner of the property that is 30' away from the driveway. He explained that he is in favor of granting the variance. Currently the equipment sits outside, if the variance is granted Mr. Miller would be able to put the equipment inside of the building, cleaning up the property.

Mr. Gilchrist asked Mr. Michael how many vehicles currently go by his house.

Mr. Michael stated that 1 or 2 vehicles per week go by.

The public hearing was closed at 9:08 a.m.

Mr. Bean asked why the maximum acreage for an excavation business is 5 acres.

Mr. Zalewski stated that it is only speculation, but the Planning Commission may not have wanted large businesses in this district. Large excavating businesses are meant to be in industrial districts.

Mr. Shively asked if some type of permit is required even if the building is agricultural.

Mr. Zalewski stated that a zoning permit is still required, but it is a common misconception that if you don't need a building permit you don't need a zoning permit either.

Mr. Bean asked if the 41 acre parcel could be split to make a 5 acre parcel.

Mr. Zalewski stated that the property could be split but then a private road would have to be constructed because the 5 acre parcel would need frontage on a county road or an approved private road. Other variances may also be required.

Mr. Gilchrist asked if a driveway could be put in to the south of the property.

Mr. Miller stated that is not his property and beyond that property there is a hill.

Mr. Shively stated that the minimum setback from a residence on each side would be 100'

Mr. Zalewski stated that each edge of the driveway has to be a minimum of 100' from a residence.

A motion was made by Mr. Bean, supported by Mr. Thompson to approve 41 acres being used for an excavation business by reason of exceptional topography. It will not be detrimental to the area and it will not impair the intent of the ordinance.

Mr. Wynes stated that how does the board know that the traffic will continue to be only 1 or 2 trucks.

Mr. Shively stated that using this driveway for an excavation business will impair the intent of the ordinance. This lot size variance is asking for an 800% increase from what the ordinance requires. It would be a more feasible variance if there were some splits created and the variance was sizably smaller.

Mr. Bean stated that splitting is not an option.

Mr. Zalewski stated that it is possible to create splits on the property, but it is possible that more variances would be needed, it would be difficult.

Mr. Bean asked if the size of the business could be stipulated.

Mr. Zalewski stated that it could be a stipulation that the business only occupy 5 acres.

Mr. Gilchrist asked if there has been indication that there would be mining of the acreage.

Mr. Zalewski stated that there has not been any indication of mining the property.

Mr. Wynes requested a roll call vote on the motion.

Yes: Bean, Thompson, Gilchrist, Wynes

No: Shively

Motion carried. Variance approved.

Mr. Wynes stated that driveway must be 100' from neighboring properties.

Mr. Bean asked if the barn was constructed for farm use, would it still have to be 100' from neighboring properties.

Mr. Zalewski stated that the 100' is a stipulation of the excavation business.

Mr. Shively stated that Mr. Michaels has agreed to the traffic, but other property owners that we have not heard from might not. The issue of the driveway is a substantial reduction from the required 100', and it is unsure how much the business will grow. There are safety concerns with the driveway being so close to neighboring properties.

Mr. Thompson stated that granting the variance for the driveway would be detrimental to the neighboring properties.

Mr. Gilchrist stated that the driveway will be far too close to neighboring residences for the heavy equipment that will be traveling down it.

A motion was made by Mr. Shively, supported by Mr. Thompson to deny the variance for the driveway to be 65' and 30' from neighboring properties because it will be detrimental to the area and it will impair the intent of the ordinance.

Mr. Wynes requested a roll call vote on the motion

Yes: Shively, Thompson, Gilchrist, Wynes
No: Bean

Motion carried. Variance Denied.

STAFF COMMENTS

Mr. Zalewski explained that in a legal opinion from the prosecutor, a chairman of a small board may make motions. The prosecutor further stated that if the ZBA chose to follow this more relaxed rule and allow the chair to make motions that they should specifically recognize that it will be implementing the more relaxed rule since this would be a change in practice. The prosecutor further stated in his opinion that the Chair may vote or abstain from voting.

BOARD COMMENTS

None Heard.

ADJOURNMENT

A motion was made by Mr. Shively, supported by Mr. Gilchrist to adjourn at 9:50 a.m.

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

No: None

Motion carried.

Howard Shively, Secretary

Brandy Harger, Recording Secretary