

ISABELLA COUNTY
ZONING BOARD OF APPEALS
April 21, 2010

Room 225
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held April 21, 2010 in room ~~320~~ 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Gordon Gilchrist, Marilyn Fosburg, Tom Courser.

MEMBERS ABSENT: Kelly Bean.

SUPPORT STAFF PRESENT: Mike Zalewski, Planner/Zoning Administrator

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 January 20, 2010 meeting were approved as submitted.

PUBLIC COMMENTS

None heard.

VARIANCE REQUEST #10-01

Mr. Zalewski explained that Reuben Luthy is requesting a variance to allow an existing 32' x 48' accessory building to remain 2' from his North property line. The minimum setback from this property line is 35'. In October, Mr. Luthy applied for a permit to construct a new garage on his property located at 1690 E. Rosebush Road. Upon reviewing his site plan for the permit, it was noted that the existing 32' x 48' barn was only 2' from the property line. That barn was built by the previous owner of the property in 2001-2002. At that time, the building was proposed to be located 60' from the property line. Since this property does not have a clearly defined front setback, the required setback to this property line is determined by the adjoining property's setback. The property line in question is a clearly defined rear property line for the property to the North and thus that owner would have a 35' setback from that line. Therefore Mr. Luthy's adjoining property has a 35' setback from the same property line. Although the previous owner of the property constructed the building too close to the property line, the change in ownership does not resolve the zoning violation. Therefore the property remains in violation of the zoning

ordinance. Mr. Luthy was notified of the violation and advised as to what steps could be taken to correct the violation. Mr. Luthy has chosen to apply for a variance. If the variance is approved, the property would no longer be in violation. If the variance is denied, the owner would have to either obtain enough property from the property to the North by a land transfer to meet the 35' setback requirement, remove the building from the property or move it to another location on the property that meets the ordinance requirements.

Mr. Luthy stated that when he bought the property he had no idea that it was in violation of the zoning ordinance. The violation came to my attention when I applied for a permit for a new garage. The property has no road frontage; there is a shared driveway with the neighbor. This neighbor has no problems with where the building is currently located. To move the building would destroy it so hopefully this variance is approved so the building can stay there. In the time that it has been there, the building has never created an issue with anyone. It is unique in the fact that there is no road frontage and 394 ft from existing buildings of the neighbors.

Mr. Gilchrist inquired as to how large the property is.

Mr. Luthy stated that the property is 6.48 acres that contains the house and barn.

The public hearing was opened for comment at 9:10 a.m.

None heard.

The public hearing was closed at 9:10 a.m.

Mr. Courser stated that there are 3 pieces of property there; the one that is in the front contains the other house and buildings.

Mr. Luthy stated that the property is 6.41 acres and he owns a total of 13 acres between the two properties.

Mr. Courser asked if the parcel that is between Mr. Luthy's building and his neighbors building is a vacant parcel.

Mr. Gilchrist asked if Mr. Luthy's house is on the second parcel.

Mr. Luthy stated that his house is on the middle parcel. The front parcel is owned by my neighbor, the middle parcel is where the buildings are and the back parcel is vacant. There is 391' between our buildings.

Mr. Gilchrist asked if there is a possibility of purchasing more land to meet the setback requirements.

Mr. Luthy stated that the neighbor was not interested in selling him any property so that he would be able to meet the setback requirement.

Mr. Gilchrist inquired as to what is stored in the building.

Mr. Luthy stated that he has equipment and animals in it.

Ms. Fosburg asked if the purchase of 33' would make the lot not comply with the lot size.

Mr. Zalewski stated that he didn't believe it would, but all lot dimensions would have to be looked at.

Mr. Gilchrist asked if the neighbor has expressed opposition to the current situation.

Mr. Luthy stated that there has been no objection to what is currently there.

Mr. Gilchrist made a motion to approve variance request #10-01.

Motion failed due to lack of support.

Mr. Courser stated that the property looks as if it is well laid out. There are no drainage ditches, creeks or anything on the property. The building structure might be a problem. If the building was not already built, it could be placed on the property some where else that would meet the requirements of the zoning ordinance.

Mr. Gilchrist stated that these setbacks will never affect the front parcel.

Ms. Fosburg stated that it would if the parcel was ever split.

Mr. Courser stated that the variance would not be detrimental to adjacent properties because it is vacant parcels around that area.

Mr. Wynes stated that a 2' variance may not interfere with the intent of the ordinance, but a 33' variance is excessive.

Mr. Gilchrist asked where on the property the barn is located.

Mr. Zalewski stated that the way that the property is set up it does not have a clearly defined front, rear or side property line. Since this property does not have a clearly defined front setback, the required setback to this property line is determined by the adjoining property's setback. The property line in question is a clearly defined rear property line for the property to the North and thus that owner would have a 35' setback from that line.

Mr. Gilchrist stated that if it were a side property line the applicant would only have to be 20' from the property line; in that case we would only be talking about an 18' variance.

Mr. Zalewski stated that in this case it is a rear property line and therefore the applicant has to be 35'.

Mr. Gilchrist stated that is Mr. Zalewski's determination.

Mr. Zalewski stated that is actually an interpretation that was made previously by the ZBA. The issue of a property not having a defined setback to a property line was brought before the ZBA a

few years ago and it was their interpretation that the setback is then determined by the adjoining property's setback requirement.

Mr. Courser stated that the problem was not created by any physical features.

Mr. Zalewski stated that when the building was built the owner was given a permit to be 60' from the property line, but did not build it in that spot.

A motion was made by Mr. Courser, supported by Ms. Fosburg, to deny variance request #10-01 because the violation was a self created issue, there are other options to resolve the problem and there are no special features on the property to warrant granting a variance.

Mr. Gilchrist stated that these types of issues happen all the time and the board has given a 2' variance before. This owner should not have to jump through a bunch more hoops. The board needs to take a look at this case; the applicant has bought property, paid his taxes, keeps the property clean and lives there.

Mr. Courser stated that the variance goes to the property, not the individual. With the information that was given I believe the correct motion was made.

Roll Call Vote:

Fosburg: Yes
Courser: Yes
Wynes: Yes
Gilchrist: No

Motion carried.
Variance denied.

VARIANCE REQUEST #10-02

Mr. Zalewski explained that Denise Barnes is requesting a variance to be able to apply for a motor vehicle repair facility on 15 acres in the General Agriculture District (AG-2). The maximum lot size in the AG-2 district for this particular use is 10 acres. Ms. Barnes would like to request a special use permit to have a motor vehicle repair facility on her property located at 9448 N. Brinton Road. The property is zoned Ag-2. An additional requirement for a motor vehicle repair facility in the Ag-2 district is that the maximum lot size is 10 acres. Since this property is 15 acres in size, it exceeds the maximum lot size requirement. Therefore Ms. Barnes is requesting a variance. If the variance is denied, Ms. Barnes will be unable to apply for the special use permit. If the variance is approved, Ms. Barnes can apply for the special use permit and the Planning Commission will then take a look at the request and determine whether or not to permit the use on the property. As the ZBA, you are simply looking at the lot size issue.

Ms. Barnes stated that the property is L shaped. They live and have the barn within the first 5 acres. The back side of the property is all wetland and is therefore not used.

Mr. Gilchrist stated that the building is 141' from one property line and 139' from another. How old is the building?

Ms. Barnes stated that the building was built in the mid 80's

Mr. Gilchrist asked what type of business automotive repair is going to be performed in the building.

Mr. William Broomfield, of 9448 N. Brinton Rd., stated that they would be performing tune-ups, electronics, breaks, and light duty mechanic work.

Mr. Gilchrist stated that it is 65' from the well to the house and 80' from the house to the barn.

Mr. Broomfield stated it is about 140' from the house to the barn.

The public hearing was opened for comment at 9:48 a.m.

None heard.

The public hearing was closed at 9:48 a.m.

Mr. Courser stated that there is no exception to the narrowness or shape of the property.

Ms. Fosburg stated that there is a marsh land on the property and it is not farmable.

Mr. Gilchrist asked why a 10 acre maximum in an Ag-2 district.

Mr. Zalewski stated that the 10 acre requirement is to avoid having large facilities in the Ag-2 District and to also avoid utilizing larger parcels of agricultural land.

Mr. Gilchrist asked if the ZBA could put conditions on the request.

Mr. Zalewski stated that the ZBA can not put conditions on the request; The ZBA needs to simply decide on whether or not to grant the variance request. Conditions can be placed on the use by the Planning Commission if and when they decide on the Special Use permit request.

Mr. Courser stated that it does not have a detrimental affect on adjacent properties, it does not impair the intent of the ordinance and the variance request is created by the property owner. She is asking for more than what other adjacent property owners enjoy as their common right.

Mr. Gilchrist stated that by not granting this variance, you are going to put this person out of business. This guy is trying to make a living and get his life going and here is another obstacle. The rule that this lady is having problems with is that she has too much property, and part of that property is useless. These rules can be construed to mean a lot of different things. This business will not hurt the neighborhood, it will not impair the intent ordinance; she just owns too much land.

Ms. Fosburg stated that there are two driveways into this property, are the setbacks okay for both drives.

Mr. Zalewski stated that there are no zoning setback restrictions on driveways, that would be dealt with through the Road Commission and they are looking for clear sight and issues like that.

Ms. Fosburg stated that the north driveway does not have clear sight.

Ms. Barnes stated that they have two driveways because the drive to the north you can not see when coming out of it. There have been three people almost killed because you are not able to see when coming out of this driveway.

Mr. Wynes stated that the swamp land can not be used for anything and does not have any practical value.

Ms. Fosburg asked if the Planning Commission could condition the driveway because it is a safety hazard.

Mr. Zalewski stated that the Planning Commission could make conditions on the driveway if and when they decide on the Special Use Permit request.

A motion was made by Mr. Gilchrist, supported by Ms. Fosburg, to approve variance request #10-02 as presented because the extenuating circumstances, shape of the property and part of the property is strictly recreational. Five acres of the property is swamp land and not useable.

Roll Call Vote

Fosburg: Yes
Gilchrist: Yes
Wynes: Yes
Courser: No

Motion carried.
Variance approved.

STAFF COMMENTS

Mr. Zalewski reminded the board that there are training session on May 4, 2010 and May 18, 2010 and encouraged the board members to sign up and attend the sessions. There would be no cost for the members to attend.

BOARD COMMENTS

Mr. Gilchrist stated that he attended a seminar on the future of Michigan. The information that has been gathered is pertinent. Things are happening fast while others are dragging along. There are two more seminars coming up.

ADJOURNMENT

A motion was made by Ms. Fosburg, supported by Mr. Gilchrist to adjourn at 10:20 a.m.

Yes: Wynes, Gilchrist, Fosburg, Courser ~~Bean~~.

No: None.

Motion Carried.

Marilyn Fosburg, Secretary

Brandy Harger, Recording Secretary