

Lodi Township
Zoning Board of Appeals Meeting Minutes
January 18, 2022

Call to Order/Pledge of Allegiance: Meeting was called to order at 7:00 pm by Chair Bauer. Pledge of Allegiance was recited.

Roll Call: Present: Bauer, Schaible, Chronis, Warner, Strader.

Others Present: Hannah Smith and Kelly McIntyre of CIB Planners, Scott Munzell Atty, Tom Covert of Midwestern Consulting, Videographer Marc Myers of Hanson Renaissance Court Recordings (for Scott Munzell), and several members of the community (see sign in sheet).

Approval of Meeting Minutes: A motion to approve the minutes from the 9/21/21 ZBA meeting was made by Schaible, second by Chronis. No discussion. Roll Call: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay – None. Motion passed: Yea-5, Nay-0.

Approve/Amend Agenda: A motion to approve the agenda as amended was made by Chronis, second by Bauer. Discussion- Warner noted that the address for the Hinderer property on the agenda was incorrect – should be 7285, not 7825 Ellsworth rd. Motion to approve agenda as so modified. Roll call: Yea- Strader, Chronis, Warner, Schaible, Bauer. Nay- None. Motion passed: Yea– 5, Nay- 0.

Public Hearing for Lodi Township Parcel #M-13-24-340-009, David Charnesky, 5600 Bluegrass Lane, Saline, MI 48176, requesting variance from Lodi Zoning Ordinance 30.0 of side yard set-back from 25 ft to 15 ft to build 10x 16 shed, per the application received by the Township Nov. 8, 2021. Motion to open public hearing made by Schaible, second by Chronis. Roll Call: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay- None. Motion passed: Yea-5, Nay-0.

Public Comment: Chairman Bauer asked if anyone was present representing the Charnesky's who wished to speak regarding the proposed variance.

David Charnesky spoke – he's lived in his home over 30 years, in one of the older subs in the township (since the 60's?). Sheds that were built many years ago were often closer than today's set back requirement. Now he's needing more room for his personal items – wants to avoid taking up back yard area, and would prefer to be in line with the current driveway concrete. That area is currently shielded by existing landscaping, and the neighbor's shed/garage is adjacent, and is also only 14 ft from the property line.

There being no further comments, Chairman Bauer asked for a motion to close the Public Hearing. **Motion** by Warner, second by Schaible to close the Charnesky Public Hearing. Roll Call: Yea- Strader, Bauer, Chronis, Warner, Schaible. Nay- None. Motion passed: Yea-5, Nay-0.

Discussion: Warner asked Mr. Charnesky if alternate sites for the shed were looked at. Also asked where the septic and well were on the property. Mr. Charnesky indicated that the septic tank and field were in the back yard, and the well was in front yard. He did not want to disturb the septic areas, and because the shed needed to be on a concrete slab there wasn't a good way to drive into the backyard for this, so made sense to put it adjacent to the current concrete driveway. Shed will have siding to match the house, a white metal roof and doors and windows. Chronis mentioned a neighbor at 5558 Bluegrass Lane had submitted a letter in support of this

variance. Mr. Charnesky stated his neighbor directly adjacent also approves of this shed. No more discussion was held.

Findings of Fact: The Board listed the findings of fact based on Zoning Ordinance Section 59.08 subsection B., Standards of Review:

1. Practical Difficulty: denying the application would deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district. Other residents have sheds, and because of location of septic/well it precludes a backyard location. Applicant asking for an adjustment in set-back requirement of just 10 ft.
2. Substantial Justice: allowing the variance will provide relief and justice to the applicant similar to other owners in the district. Other property owners have sheds, some also closer to property lines than 25 ft.
3. Unique Circumstances: Other locations not practical, as the septic system is in the back yard, well in the front yard. Side yard makes the most sense.
4. Preservation of Property Rights: the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property owners in the same zoning district. Other homeowners have sheds/structures within the 25 ft set back.
5. Public Safety and Welfare: The requested variance can be granted that the spirit of this Ordinance will be observed and public safety and welfare is secured in such a way that a) it will not increase hazard of fire or endanger public safety, b) it will not unreasonably diminish or impair the value of surrounding properties, c) it will not alter the essential character of the area or surrounding properties, d) it will not impair the adequate supply of light and air to surrounding properties. Variance meets this requirement.
6. Not Self -Created: it was not created by the applicant – the house was already there. Originally no need for a shed when house was built, but now requires more storage of recreational/lawn care equipment.
7. More than Mere Inconvenience: the alleged hardship and practical difficulties that will result from a failure to grant the variance are substantially more than mere inconvenience or an ability to attain a higher financial return. By strict adherence to the ordinance there would be possible damage to the applicant's septic system.
8. Minimum Necessary Action: for the reasons set forth in the application, the variance is the minimum necessary relief to allow reasonable use of the land and home. Yes.

Motion by Schaible, second by Chronis, to approve David Charnesky's request for variance to the side yard setback of 25 ft to 15 ft from requirements of Section 30.0, Dimensional Standards, to construct a 10x16 ft shed at 5600 Blue Grass Lane, based on the 8 findings of fact above, as listed in Section 59.08 subsection B of the Lodi Township Zoning Ordinance. There being no further discussion, Chairman Bauer held a roll call vote: Yea- Schaible, Warner, Chronis Bauer, Strader. Nay- none. Motion passed 5-0.

Public Hearing for Lodi Parcel #M-13-17-200-003, Steven R Hinderer, 7285 Ellsworth Rd, Ann Arbor, MI 48103, requesting variance from Lodi Township Zoning Ordinance Section 30.101

front yard set-back in AG district from 100 ft to 66 ft from the centerline of the road to add on to a pre-existing porch, to wrap around the west side of the house, per application received Dec. 13,2021.

Motion by Warner, second by Schaible to open the Public Hearing for the above referenced project. Roll call vote: Yea- Strader, Bauer, Chronis, Warner, Schaible. Nay-none. Motion passed, Yea-5, Nay-0.

Public Comment: Chairman Bauer asked if any representatives of Mr. Hinderer were present and wanted to speak. Mr. Scott Munzell, attorney for Mr. Hinderer, spoke regarding the proposed variance, summarizing the history of the project. The applicant wishes to extend front porch around the house to the west (to finish construction which was started years ago) to be able to utilize an exit door to the west, which cannot currently be used until said porch is constructed. The Township has received a letter from a neighbor, Mr. Robert Beane in support of the variance. Mr. Munzell also presented a copy of the Dec. 27, 2021 Township Notice which Mr. Hinderer had taken to a few more neighbors (7480, 7611 W. Ellsworth Rd) who signed this notice in support of the variance (included with minutes). Mr. Munzell went through the Township Variance 59.08 requirements as he felt they applied to the request.

Christina Smith, stated that the front yard set-back has always been 100 ft (may be confused with the County Road 66 ft ROW?), and that she and the Supervisor could not find any record of any permits submitted for the original construction project in 2009. Mr. Hinderer indicated he did file building permits with the County and said they were delivered to the Township. The Building Permit has since expired and he is pursuing a new permit. Hannah Smith of CIB Planners spoke, referencing a report prepared for the Township dated January 17, 2022, addressing the issues of this request. She reviewed the key points of this report. The current (original front porch on the north side of the house) is a legal, non-conforming structure, and the request is to extend it westerly 7 ft, not adding to the current degree of nonconformity of the existing front porch. Currently no records of permits from 2009 have been presented/found from the 2009 construction, however there would have been a variance required at that time since the original house violates the current set-back requirements (and those in place in 2009). Based on their analysis of the project as it applies to the Township Zoning Ordinance, Section 59.08 Variances, Ms. Smith recommends the Township allow the variance as requested. No further public comments. Motion to close the Public Hearing made by Chronis, second by Schaible. Roll call vote: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay- None. Motion passed 5-0.

Discussion: Warner asked if other construction was done in 2009 when porch was supposed to be added on. Mr. Hinderer said yes. Warner asked if the front of the house and current front porch were the original, he indicated yes. Warner asked if there are any hard copies of the permits for this construction, and could Mr. Hinderer produce them? He indicated he didn't have them with him but felt he could get them from the County. His wife was general contractor and is now deceased, so would be an effort to sort through the paperwork. Warner wondered if this could partially be a self-created problem, however if the original contractor was a scheister as he mentioned, how does that play into the situation? Mr. Hinderer said they did have an inspection by the Building Dept that failed, so there must be a permit for them to come do an inspection.

Christina Smith countered that perhaps the inspector could have come out because there was no building permit? Bauer asked if the other construction was finished – Mr. Hinderer indicated the structural portions were done, but the remaining (mechanical etc..) can't be completed until the set-back issue has been resolved, per the County. No further discussion.

Findings of Fact:

1. Practical Difficulty: Strict compliance with ordinance standards would prohibit the applicant from extending the original porch from the front of house around to the west to the constructed door. The door to the porch cannot be used without the porch extension and would require additional safety measures or removal without the porch extension. Although the structure is considered non-conforming, the degree of non-conformity is not affected by the porch extension. The existing front yard setback is maintained;
2. Substantial Justice: The requested variance will provide relief and justice consistent with other property owners in the district, as the structure is similarly set back to others in the zoning district;
3. Unique Circumstances: The need for the variance is due to unique circumstances of the land and structure. The existing porch is non-conforming because it does not meet the front yard setback;
4. Preservation of Property Rights: The variance will allow for preservation of property rights, as the applicant will be able to safely use the door on the west side of the house and complete construction on the house;
5. Public Safety and Welfare: The requested variance is not a threat to public safety or welfare and will not alter the character of the area. The non-conforming front yard setback will not be changed by the expansion of the porch;
6. Not Self-Created: The need for the variance is not self-created, as the existing porch was constructed with the house; the setback distance was established with the home construction;
7. More than Mere Inconvenience: The alleged hardship and practical difficulty resulting from failure to receive the variance is an inconvenience and would not allow the applicant to properly use the constructed door on the west side of the house nor enjoy the extended front porch; and
8. Minimum Necessary Action: The variance requested is the minimum necessary action, as it does not affect the degree of nonconformity for front yard setback.

Motion by Schaible, second by Bauer to approve the variance requested by Steven R Hinderer, 7285 Ellsworth Rd, Ann Arbor, MI 48103, requesting variance from Lodi Township Zoning Ordinance Section 30.101 front yard set-back in AG district from 100 ft to 66 ft from the centerline of the road to add on to a pre-existing porch, to wrap around the west side of the house, based on Findings of Fact in accordance with Lodi Township Zoning Ordinance 59.08

Variations. Roll call vote: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay- none. Motion passed 5-0.

Public Hearing for Lodi Township parcel numbers M-13-08-200-008 and M-13-08-300-004 (Waters/Streiter/Ellsworth Rds.), Alan A. Aprill Trust requesting variances from Lodi Township Zoning Ordinances 2021-002, 30.205.A1 and A2, 30.205B1, B1B and B1C Access to Roads-Shared Driveways, in the AG, R-1 and PUD districts, to allow driveway access to a roadway that is not at the actual designated frontage of the proposed split parcels to create 4 home sites, per application received Dec. 20, 2021.

Motion by Schaible, second by Warner to open the Public Hearing. Roll call vote: Yea- Strader, Bauer, Chronis, Warner, Schaible, Nay- none. Motion passed 5-0.

Public Comment: Mr. Tom Covert of Midwest Consulting gave an overview of the project. Emphasized the uniqueness of the 2 parcels, the county drain that runs through it, extensive wetlands, and existing house and barn/outbuildings. Proposal is for the 2 large parcels to be split into 4 buildable lots. Based on the amount of buildable land on the acreage, 13 home sites COULD be built with the current zoning, but they only want 4. The 2 northern parcels have frontage on Waters Rd, the 2 southern parcels have frontage on Ellsworth Rd. Washtenaw County Road Commission has given permits for the 4 driveways as shown on Midwest drawings, which do not rely on receiving the Township variance, however the splits cannot occur as shown without the variances. Mr. Covert spoke with Craig Hoeft, retired Saline Fire Chief, regarding safety issues with fire/police being able to find homes with access off roads where they do not have frontage – and discussed the enhanced 911 system for locating homes, access points (letter is included in their submittal). If the addresses are off Waters Rd, the first responders will be able to find them. Mr. Scott Munzell, attorney for the Trust, discussed his qualifications in real estate/ local government law and submitted a large drawing showing some driveway options allowed without the proposed variances, and wanted them added to the submittal. Mr. Munzell feels that in zoning theory, variances are a “relief valve” to apply common sense when a broad-based zoning ordinance is applied across a wide district. Unique conditions can cause practical difficulties. Mr. Munzell gave a brief history of the prior submittals but said this was a new application and had nothing to do with prior actions. Mr. Munzell gave summary of the proposed existing site concerns- large wetlands, and a County Drain crossing the site. To meet current zoning requirement 2 separate very long, expensive and difficult to construct driveways would need to be built across the wetland to access the home sites on the southern parcels. The Practical Difficulty language of the variance requirement standards can be met 3 ways – unnecessary burden can be financial in Mr. Munzell’s opinion, citing a legal case National Boatland Inc. v. Farmington Hills Zoning Board of Appeals (per Munzell, State Law doesn’t say what Practical Difficulty is, but case law speaks to it). In that case there was no prohibition to consider financial impact in complying with zoning ordinances, which is contrary to what the CIB Planners report says. Mr. Munzell asked why an earlier applicant wasn’t asked to move his septic tank/fields (very expensive), in order to strictly comply with the ordinance. Mr. Munzell reviewed his responses to the Lodi Township Ordinance 59.08 Variations, reviewing each of the 8 points (included in their

submittal). Mr. Munzell believes the application meets the standards of the ordinance to grant the variance. Mr. Munzell discussed the Lodi Township consultant responses, first Mr. O'Jacks response (included in our packet), which he felt were confusing and sometimes incorrect. Mr. Munzell felt the response from the Township Planner and Township Engineer indicating that they must show why a private road was not considered feasible as an option was wrong – they do not have to prove that all kinds of options were reviewed, if they meet the test for the variance requested. He reviewed case law and found one case where a Township Zoning Board of Appeals granted a variance, the neighbors weren't happy, and they asked the Township why the applicant can't do it all these other ways and took Township to court and lost. (He did not cite the case). He feels this would be arbitrary and capricious. Mr. Munzell said the Planners Report indicated financial issues couldn't be considered in the variance consideration. He felt the Board had to ask "would this be an unnecessary burden?", financially. The Planners also said the applicant had to prove why a private road was not feasible, and Mr. Munzell disagreed, citing Court of Appeals case No. 327701, Angle and Evans v. Monitor Township ZBA, Sept. 13, 2016 decision. Felt the safety concerns were a red herring. Urged Board to apply common sense to the request. Michelle Massey spoke, saying a neighbor with property in the wetland area had to access through an easement on another neighbor's property and they (the Trust) don't have that option. Hannah Smith of CIB, the Township's planner spoke, summarizing her report on the 5 variance requests (included in our packet), reviewed against Zoning Ordinance 59.08, Variances. Based on their review of the 5 variances requested per the standards of the Zoning Ordinance, they are recommending denial of the requests. Since the Township Attorney Mr. Jessie O'Jack was not able to be present, he asked to have his letter dated 1/13/22 to the Zoning Board of Appeals be read into the record. Ms. Chronis read the letter to the meeting attendees. Based on his analysis of the variance request, Mr. O'Jack recommended denial of the variance request, citing many reasons. The Township Engineer also submitted a review of the variance request dated 1/18/22 (included in our packet) which also recommended denial of the variance request, and recommended a private road be considered by the applicant. Mr. Munzel wondered if the planners had identified any other parcels in the township that had wetlands across the entire frontage which is very unique. They indicated they had not searched specifically for this. Mr. Covert wanted to clarify that just western driveway is the shared driveway. Also, that Diuble Meadows (sub to the west) pursued a PUD instead of variances because of the nature of the wetland that is there. Chronis asked for clarification on the driveways – Mr. Covert said the existing home (Parcel A) would use the existing driveway (off Waters Rd), Parcel B (south) would use a driveway *easement* in order to access off Waters Rd (not shared), and parcels C and D would use a shared driveway so parcel C (south) could also have access to Waters Rd. Ms. Kugler asked that a letter from neighbor Ian Reach to the Township be read- Chronis read letter in support of the variances. Christina Smith suggested all letter/ emails regarding this issue be read. An email from Sherilynn Lounsberry to the Township was read, and was not in support of the variances. There being no other comments, a motion was made to close the Public Hearing by Schaible, second by Bauer. Roll call vote: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay – none. Motion passed 5-0.

Discussion: Warner asked if a study has been done on the wetlands to rule out building on them? Mr. Munzell said he wasn't aware of one regarding the quality of the wetlands, but the size makes it regulated by the State. Mr. Covert said the wetlands are mentioned in the Townships Master Plan as something to be preserved. Warner asked about the septic locations shown on the drawings, Mr. Covert said this is where they found suitable soils for a gravity septic system. Last question was if they had pursued any research on a private road? Mr. Covert said they have looked at concepts and issues of a private road but there were detrimental impacts of a private road such as only one location to put it – barn and sheds would need to be demolished, proximity to the creek would be of concern during construction for erosion (which was noted is a normal construction concern and addressable). Midwest has not designed a private road as of yet. Mr. Munzell said the proposal for the land divisions meets the Land Division Act. However, without the variances they cannot get the building permits. Mr. Covert said the lot splits meet the geospatial requirements of the zoning district; however, Ms. McIntyre of CIB indicated the Land Division Act says that if the Township has specific zoning requirements – these must be considered in order for the split to occur, but this Act only applies to parcels under 10 acres, and 2 of the parcels are over 10 acres (Parcels B and C). Strader felt that there are ways for the applicant to accomplish their goals without requiring so many variances – the fact that a private road seems to address these issues but hasn't been ruled out, and the fact that the variances can expire if the work isn't completed within the time allowed, leaving non-conforming parcels is a concern. By not granting the variances we would not be saying you can't build on the property, there are just perhaps other options to seeking so many variances, and these aren't small deviations from the zoning ordinance, but significant ones. No further discussion.

Findings of Fact:

1. Practical Difficulties: Strict compliance with ordinance standards would not prohibit the applicant from developing the land for the construction of single-family homes with driveways, as permitted. The applicant has not provided evidence that alternatives, such as construction of a private road in line with ordinance standards, are not possible;
2. Substantial Justice: The requested variances will not provide relief and justice consistent with other property owners in the district;
3. Unique Circumstances: The need for the variances is not due to unique circumstances of the land, as many properties in the AG zoning district and surrounding area have similar conditions;
4. Preservation of Property Rights: The variances are not necessary for preservation and enjoyment of property rights, as the land can be developed for use of single-family homes consistent with others in the district and driveways constructed or alternative options, such as a private road, in a way that meet the ordinance standards;
5. Public Safety and Welfare: A granting of the variances would not observe the spirit of the ordinance as the applicant is requesting variances from recently adopted Ordinance standards. Granting a variance to these standards erodes the integrity of the Ordinance and the governing procedures of the Township. Additionally, safety concerns for emergency access exist;

6. Not Self-Created: The need for the variances is self-created, as the difficulty of constructing driveways or alternatives that would meet the ordinance is expense; Personal preferences and needs related to circumstances of an applicant and their family are not basis for a variance;

7. More than a Mere Inconvenience: The alleged hardship and practical difficulty resulting from failure to receive the variances is one of higher expense (financial), and not an inconvenience; Financial considerations are not a basis for a variance;

8. Minimum Necessary Action: The variances requested are not the minimum necessary relief to allow reasonable use of the land, as there are alternative options for providing access that would be more in compliance with the ordinance. The applicant has not provided evidence that these alternatives are not feasible.

Motion by Bauer, second by Chronis to deny the request for variances sought by the Alan A. Aprill Trust requesting variances from Lodi Township Zoning Ordinances 2021-002, 30.205.A1 and A2, 30.205B1, B1B and B1C Access to Roads-Shared Driveways, in the AG, R-1 and PUD districts, to allow driveway access to a roadway that is not at the actual designated frontage of the proposed split parcels to create 4 home sites, per application received Dec. 20, 2021, based on Findings of Fact in accordance with Lodi Township Zoning Ordinance 59.08. Roll Call vote: Yea- Schaible, Warner, Chronis, Bauer, Strader. Nay- none. Motion passed 5-0.

Other Business: None

Motion to Adjourn by Schaible, second by Bauer. Roll call: Yea- Schaible, Chronis, Warner, Bauer, Strader Nay – none. Meeting Adjourned: 9:08 pm

Respectfully Submitted,

Cindy Strader, Secretary Lodi Township Zoning Board of Appeals