

## **BOARD OF ZONING AND APPEALS MINUTES**

**Tuesday, February 14, 2017**

**7:00pm**

### **A. Andrew Baudendistel's reading of the Voluntary Title VI Public Involvement Survey –**

As a recipient of federal funds, and in support of Dearborn County's efforts to ensure nondiscrimination and equal access to all citizens, the County gathers statistical data regarding participants in county activities. Therefore, we have provide a Voluntary Title VI public Involvement Survey at this meeting. You are not required to complete this survey. However, the form is anonymous and will be used solely for the purpose of monitoring our compliance with Title VI and ADA.

### **B. ROLL CALL- Members present:**

Richard Pope  
Phil Darling  
Jim Thatcher  
Russell Beiersdorfer

Nicole Daily—Zoning Administrator  
Andrew Baudendistel—Attorney

#### **Members Absent:**

Jane Ohlmansiek

### **C. ELECTION OF OFFICERS**

Mr. Russell Beiersdorfer made a motion to elect Rick Pope as Chairman, Jane Ohlmansiek as Vice-Chairman, and Andrew Baudendistel as BZA attorney and Nicole Daily as Secretary. Seconded by Mr. Jim Thatcher. All in favor. None opposed. Motion carried.

### **D. Action on Minutes –**

Action on minutes was postponed due to having only two members present from the last meeting.

### **E. Old Business Scheduled to be re-opened:**

<b>1. Request:</b>	<b>Variance Request for Pond Setback</b>
<b>Applicant/Owner:</b>	<b>Robert Truman for Truman Services, LLC</b>
<b>Site Location:</b>	<b>Peppertown Road</b>
<b>Legal:</b>	<b>Sec. 10, T7, R1, Parcel #15-01-10-800-021.000-006</b>
<b>Township:</b>	<b>Harrison</b>
<b>Zoning:</b>	<b>Agriculture (A) Size: 71.59 Acres</b>

Ms. Daily presented the staff report. The property owner is requesting a setback variance for a pond that was constructed on this property without the proper permits. The setback requirement for a pond is 150

feet from any road right of way. Therefore, the applicant is needing a variance of 130 feet because the pond will only be 20 feet from the right of way of Peppertown Road. The initial hearing was tabled because during staff inspections prior to the meeting in October 2015, it was determined that the pond was deeper than 20 feet and had some issues regarding the construction of the dam.

Ms. Daily stated she had conducted an inspection a week and a half prior to the meeting and expressed concerns to the property owner about the condition of the dam at the time of that inspection. The dam was beginning to erode, crack and possibly fail on top-middle of the dam. The property owner did correct this concern after being notified. But there still remains concerns regarding permits through IDNR and the Corp of Engineers which may require a permit. However, Ms. Daily has not heard back from these agencies prior to the meeting.

Ms. Daily did resent out five notices to adjoiningers.

Mr. Pope asked for clarification on erosion verses settling shown in the pictures in the slides.

Mr. Truman, property owner addressed the Board. He advised the pipe was installed when it was still cold. It has all been thawed back out and re-compacted. The pond was lowered to within 20 feet of depth level. Mr. Truman is unsure why IDNR needs to be involved.

Mr. Pope advised there are concerns of the trees being in the dam.

Mr. Truman advised he didn't want to destroy the natural environment. When he removed the tree, he removed it down to the root ball. Mr. Truman advised a tree is right on the edge of a dam, not in the dam. Mr. Truman stated it is in the back of the dam and has two feet of dirt at the base of the tree. Mr. Truman advised the base of the dam is over 160 feet wide. The top of the dam is 15 feet wide.

He advised the dam is not going anywhere. Mr. Truman constructed the pond and has constructed quite a few ponds in the past as well, not to this scale, those ponds were in Ohio.

Mr. Truman doesn't have a problem with IDNR coming in but this has been going on for 2 years and he has plans on building there. He brought the pond in to compliance so he doesn't see the need for IDNR to get involved. He would like for this to be handled so he can move forward.

Mr. Thatcher discussed liability if this Board approves the request.

Mr. Beiersdorfer stated both the Board and Mr. Truman would be liable if the dam fails.

Mr. Truman advised the contour of the land does not allow for the pond to be pushed back any further.

Mr. Pope asked if an anti-siphon was installed with the pipe that is located in the middle of the dam.

Mr. Truman stated there is no siphon added to the pipe.

Mr. Truman stated there is only one house downstream and it is occupied.

Mr. Pope asked how many acres of water are in the pond. Mr. Truman guessed 50 Acres when considering the depth to be included.

The Board had no further questions of the applicant.

**Mr. Darling made a motion to open public discussion. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.**

There were no public comments.

**Mr. Beiersdorfer made a motion to close public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.**

Mr. Darling expressed concern about where the pipe comes out the bottom, it is already eroding. He would feel better if there was an extension of the pipe, if it ran in to the little creek, not just at the toe of the dam.

The Board discussed flooding in this area approximately 15 years ago and the impact that had on that area.

Mr. Truman feels his dam will control the water issue if that were to happen again.

Mr. Darling asked Mr. Truman if he was going to put something on the end of the pipe to prevent blockage from occurring.

Mr. Truman stated he would.

Mr. Beiersdorfer expressed concerns about how this was constructed. He has a lot of problems with this pond. He doesn't like what is behind it, the road being there.

Mr. Thatcher agreed with Mr. Beiersdorfer. He would like to see this inspected and make sure there isn't slippage. He would want that before he makes a favorable recommendation.

Options on how to handle this request were discussed between the Board and Staff.

Mr. Baudendistel read an e-mail from Dearborn County Soil and Water Conservation District that recommended IDNR and Corp of engineers should be consulted on the inspection and State and Federal permits prior to local permits being issued.

Mr. Beiersdorfer made a motion to grant the variance with the condition that IDNR and Corp of Engineers both do their inspections and approve/deny the construction of the pond base on their jurisdiction over the pond. Both IDNR and Corp of Engineers would have to sign off on this for the Board's variance to take effect and prior to any local permits being issued. Motion was seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

<b>2. Request:</b>	<b>A Variance for Pond Setbacks</b>
<b>Applicant/Owner:</b>	<b>Mike Stehlin</b>
<b>Site Location:</b>	<b>9227 SR 62</b>
<b>Legal:</b>	<b>Sec. 14, T5, R3 Parcel# 15-10-14-300-046-000-004</b>
<b>Township:</b>	<b>Clay</b>
<b>Zoning:</b>	<b>Residential (R) Size: 6.93 Acres</b>

Ms. Daily presented the staff report. The applicant is requesting a variance to construct a pond closer to the roadway and property lines than the Code allows. The setback requirement for a pond is 150 feet from any right of way and 30 feet from any property line. There is also a requirement that all ponds need to be constructed no closer than 150 feet to any existing residential structure. These setbacks include any portion of the pond including edge of water, dam, toe of slope related to the dam, etc.. Therefore, the applicant is requesting a variance of 21.5 feet from the side property line, a variance of 150 feet from the road right-of-way, a variance of 86.5 feet from the nearest existing residential structure to the south, a variance of 10 feet for the nearest existing residential structure to the northwest and a variance of 40 feet for the existing residential structure that is located across SR 62. The applicant submitted a revised site plan, which the dam was extended along the neighbor's property and a berm was added along the right-of-way of SR 62. The County Engineer felt this was fine. It is a State maintained road, not County maintained.

Mr. Stehlin, property owner, addressed the Board. He had nothing additional to add other than when he adds the berm, a fence will also be added along the right-of-way for added protection.

The Board had no further questions for the applicant.

Ms. Beiersdorfer asked if it was sewer or septic in this area.

Mr. Stehlin stated the neighbor's property was on septic and the pond would be higher than their septic system. There is a natural drainage ditch between the neighbor's property and the pond.

**Mr. Darling made a motion to open public discussion. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.**

There were no public comments.

**Mr. Beiersdorfer made a motion to close public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.**

Mr. Thatcher advised the requested changes were made by the applicant so he has no opposition.

Mr. Darling agrees. He advised Ms. Olmansiek's main concern was a car traveling in one direction. He stated that the revised plan addresses the concerns of the Board from the last meeting.

Mr. Thatcher made a motion to approve variance for Mr. Stehlin located at Clay township, Sec. 14, T5, R3, Parcel# 15-10-14-300-046-000-004; variance of 21.5 feet from the side property line, a variance of 150 feet from the road right-of way, a variance of 86.5 feet from the nearest existing residential structure to the south, a variance of 10 feet for the nearest existing residential structure to the northwest and a variance of 40 feet for the existing residential structure that is located across SR 62, based on meeting the criteria set forth in Article 3, Section 320 of the Dearborn county Zoning Ordinance. Seconded by Mr. Darling. All in favor. Motion carried.

**E. OLD BUSINESS TO REMAIN TABLED – NONE**

**F. NEW BUSINESS-**

**Request:** A Variance for Building Setbacks  
**Applicant/Owner:** Steven and Mary Paff  
**Site Location:** 26444 Whites Hill Rd.  
**Legal:** Sec. 21, T7, R1 Parcel # 15-01-21-300-026.001-018  
**Township:** Logan  
**Zoning:** Agricultural (A) Size: 3.003 Acres

Ms. Daily presented the staff report. The request is for a variance approval for side yard setback for an existing accessory structure build too close to the side property line. The owner has constructed a garage in which the front corner is too close to the property line. The owner applied for a barn permit back in 2004 but the barn was never constructed therefore the permit expired. The property owner also received a permit to construct the residential structure in 2005, which was constructed. The owner assumed the old barn permit could be used for the garage that was recently constructed, but a new permit should have been issued. The owner is in the process of splitting the property to sell the house. The front southern corner of the building is 2.3 feet from the property line, therefore the variance needed is 2.7 feet.

The owner has also discovered that a portion of the paved driveway is located across the property line. He is currently working with the neighbor to discuss the different options to resolve this issue. Mr. Paff will either buy a strip of additional property or obtain an easement from the neighbor. Either scenario will be completed through the certified survey process.

Seven letters were sent out, six were received, and one was returned as unclaimed. An email was sent by an adjoining property owner and was provided to the Board. That adjoiner did not have an issue with this request.

Mr. Thatcher asked if this adjoiner is where the encroachment is located.

Ms. Daily advised it is not. They are behind the applicant, to the east. The encroachment is located on the southern property line, the same location as the needed variance.

Mr. Beiersdorfer asked if the applicant purchased additional ground, would the variance request be a moot point.

Ms. Daily stated yes. The variance and encroachment would be moot.

Mr. Paff, property owner, addressed the Board. He advised they are trying to divide their property in half and downsize their home. John, neighbor to the south and location of the encroachment, is in Florida so the applicant couldn't discuss this with him. The applicant and John have worked together in the past. Mr. Paff has been maintaining the hillside anyway.

Mr. Thatcher asked how Mr. Paff wanted to resolve this.

Mr. Paff responded whatever is easiest is how he would like to resolve this and whatever works best for his neighbor. Mr. Paff thinks it is a possibility to buy some property from his neighbor. Mr. Paff said he could cut back the driveway and trim it up.

Ms. Daily advised we don't have setback for pavement so he would just need to trim it back to the property line.

Mr. Thatcher asked about tabling this until we can talk to the property owner. Mr. Paff advised if his house sells, he wants to be able to go ahead and build and he doesn't know when his neighbor will be coming back in town so it is time sensitive.

No other questions of the applicant.

**Mr. Beiersdorfer moves to open public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.**

There were no comments from the public.

**Mr. Darling made a motion to close public discussion. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.**

Mr. Darling reiterated the time sensitivity of this request due to the home being for sale.

Mr. Thatcher asked how many acres are in the adjacent property.

Mr. Paff advised approximately 4 acres.

Mr. Thatcher asked how to deal with the pavement if they grant the variance.

Ms. Daily advised either way the pavement has to be addressed prior to a survey being approved by staff. A condition could be placed on any approval that the encroachment be resolved prior to a survey being approved by staff. Ms. Daily advised they can't sell the house without the survey being done.

Mr. Paff stated if the variance is granted, and the house sold prior to speaking with the neighbor, he would cut the driveway back in order to complete the survey.

Ms. Daily said if you grant the variance, the applicant is saying he could sell the home if he cuts the pavement back. The conditions on this would be settling the encroachment one way or the other.

**Mr. Darling made a motion to grant the variance to the Mr. Paff at 26444 Whites Hill Road, West Harrison, IN for a 2.7 foot side variance for accessory structure. The condition of this approval is that the encroachment be resolved through a certified survey, prior to the release and approval of the survey. This request meets the criteria set forth in Article 3, Section 320 of the Dearborn County Zoning Ordinance. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.**

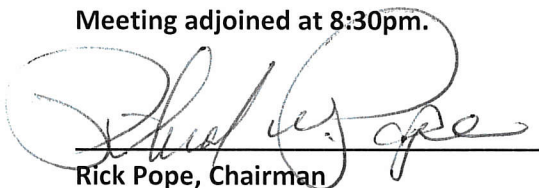
**G. ADMINISTRATIVE:**

The 2017 meeting schedule was provided to Board members. Plan Commission approved the meeting schedule in January. Ms. Daily stated there will be a meeting in March; 4 cases. Mr. Beiersdorfer will be gone. The remaining members should be at the meeting.

Mr. Baudendistel provided an update on legal cases to Board.

**Mr. Beiersdorfer made a motion to adjoin the meeting. Mr. Thatcher seconded the motion. All in favor. None opposed. Motion carried, meeting adjointed.**

Meeting adjointed at 8:30pm.



Rick Pope, Chairman



Nicole Daily, Zoning Administrator