

BOARD OF ZONING AND APPEALS MINUTES

Tuesday, March 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 provided 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:

Rick Pope

Russell Beiersdorfer

Phil Darling

Jim Thatcher

Jane Ohlmansiek

Nicole Daily – Zoning Administrator

Andrew Baudendistel – Attorney

Members absent:

None

C. ACTION ON MINUTES:

Mr. Darling made a motion to approve the December 13, 2016 meeting as written. Seconded by Mrs. Ohlmansiek. Mr. Beiersdorfer and Mr. Thatcher abstained from voting. All in favor. None opposed. Motion carried.

Mr. Beiersdorfer made a motion to approve the February 14, 2017 minutes as corrected. Seconded by Mr. Darling. Mrs. Ohlmansiek abstained from voting. All in favor. None opposed. Motion carried.

D. OLD BUSINESS SCHEDULED TO BE REOPENED- None

E. OLD BUSINESS TO REMAIN TABLED - None

F. NEW BUSINESS -

- | | |
|--------------------|--|
| 1. Request: | A Variance for Driveway Spacing |
| Applicant: | Seig Surveying |
| Owner: | Amy Mund |

Site Location: Possum Ridge Road
Legal: Sec. 3, T5, R2 Parcel #15-08-03-400-026.004-019
Township: Manchester
Zoning: Agriculture (A) **Size:** 7.5 Acres

Ms. Daily presented the staff report. The applicant is requesting the approval of a variance for driveway spacing. The proposed driveway location is measured by the applicant to have the best sight distance along the road frontage of the parcel, even when trying to line the proposed driveway across from an existing driveway. The required driveway spacing on a collector road with a speed limit of 45 MPH is 230 feet. Therefore, the variance request would be for 185 feet to the north and 190 feet to the south (the actual spacing would only be 45 feet from the northern driveway and 40 feet from the southern driveway). If the variance is approved, a driveway permit would still need to be applied for through the Planning and Zoning Office for the new location. There were six letters mailed out to adjoining property owners and all six were delivered. A couple of phone calls were received just wanting a better description of the request but there were no concerns or objections.

Mr. Thatcher asked if the variances are they based on where Todd suggested the driveway must be constructed.

Ms. Daily advised yes, on the south side of the property line. The numbers are the same as what Todd has requested for the sight distance.

Mr. Rob Seig spoke on behalf of the property owners. The proposed location is the best location for the driveway. It would be a safety issue if any more to the north, and the septic fields have been tested on the north area of the property. If the driveway was placed across the existing driveway, which is permitted by code, the driveway wouldn't have meet sight distance requirements. The driveway spacing variance request is the safer alternative for the variances needed.

The Board had no questions for Mr. Seig.

Mr. Beiersdorfer moved to open public discussion, seconded by Mr. Darling. All in favor. None opposed. Motion carried.

There were no public comments.

Mr. Beiersdorfer moved to close public discussion. Seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

Mr. Beiersdorfer stated from a safety viewpoint, this location is the safest place to put the driveway.

Mr. Thatcher made a motion to grant variance for Amy Mund, property located in Manchester Township, Sec. 3, T5, R2 Parcel #15-08-03-400-026.004-019 request for driveway spacing, 185 feet to the north and 190 feet to the south, as it satisfies the criteria of Article 3, Section 320 of the Dearborn County Zoning Ordinance. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

2. **Request:** A Variance to create a buildable lot with no road frontage
Applicant: Seig Surveying
Owner: Gary and Laura Gellert
Site Location: Sawdon Ridge Road/Gellert Lane
Legal: sec. 31, T7, RI, Parcel #15-01-31-400-030.000-018
Township: Logan
Zoning: Agriculture (A) **Size: 2.00 Acres (proposed)**

Ms. Daily presented the staff report. A variance approval to create a buildable lot without the required road frontage. The property owner is wanting to split off a 2 acre tract of ground for building purposes. The lot would be accessed through an easement/private lane (Gellert Lane), which has public access to Sawdon Ridge Road. The required road frontage is 150 feet, therefore the applicant is requesting a variance of 150 feet (100% of the required frontage). If the board approves the variance, the applicant will need to follow the submittal process for a certified survey. Eight letters were mailed to adjoining property owners, seven were delivered and one remained in transit.

Mr. Seig spoke on behalf of the Gellert's. The dividing of the land is for family to build a residential structure. The Gellert's would maintain ownership of the private lane and would create a new parcel, roughly two acres, and make it a common shared access lane with a maintenance agreement. It is an attempt to use existing infrastructure and not create an odd shaped panhandle lot.

Mr. Darling asked how many properties are accessed off of the private lane.

Mr. Seig stated there are two currently coming off of the current lane.

Mr. Beiersdorfer asked how long back the lane from Sawdon Ridge to the proposed lot split.

Mr. Seig stated it was approximately 1973 feet, but subtract 350 feet to the beginning of the new parcel.

Mr. Beiersdorfer asked if the property owners are proposing to put in any driveway blisters.

Mr. Seig advised it has not been discussed. The lane is only 11-12 feet wide so there isn't a lot of space for two cars. With the proposed 50 feet egress/ingress easement there is room for a blister to be installed.

Mr. Beiersdorfer recommended to do this.

The Board had no other questions for the applicant.

Mr. Beiersdorfer moved to open public discussion, seconded by Mr. Darling. All in favor. None opposed. Motion carried.

There were no public comments.

Mr. Beiersdorfer moved to close public discussion, seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

Mr. Pope advised short of the blisters, he has no concerns. The remaining Board members agreed.

Mrs. Ohlmansiek made a motion to grant a variance to create a buildable lot with no road frontage of 150 feet for the Gellert's on Sawdon Ridge/Gellert Lane in Logan Township, Sec. 31, T7, R1, Parcel #15-01-31-400-030.000-018, citing the request satisfies the criteria of Article 3, Section 320 of Dearborn County Zoning Ordinance. Seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

- 3. Request: A Variance for building setback and to create a buildable lot with no road frontage.**
Applicant/Owner: West Harrison, LLC
Site Location: 27997 Moore Drive
Legal: Sec. 15, T7, R1, Parcel #15-01-15-100-004.000-006
Township: Harrison
Zoning: M-2 Size: 7.8 acres (proposed)

Ms. Daily presented the staff report. A variance approval to create a buildable lot without the required road frontage and a variance for a side yard setback on a primary structure. The property owner is wanting to split off a 7.8 acre tract of ground for an existing mobile home. The lot would be accessed through an easement which has public access to Moore Drive. The split would create a buildable lot with no road frontage and would decrease the side yard setback of the existing mobile home to 18 feet. The required road frontage is 150 feet, therefore the applicant is requesting a variance of 150 feet (100% of the required frontage). The required side yard setback is 30 feet, therefore a variance of 12 feet is needed. There were seven letters mailed out to adjoining property owners and all the letters were

delivered. If the board approves the variances, the applicant will need to follow the submittal process for a Certified Survey.

Mr. Beiersdorfer asked if this is for creating an easement to reach the rest of the property.

Ms. Daily advised yes, if the 40 foot panhandle was not created the remaining tract would be land locked.

Mr. Randy Maxwell spoke as a representative for the property owner. He advised where the county right of way stops. The lot split is being done for financing purposes. The trailer is 18 feet from the panhandle.

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

Mr. Mark Blackaby, adjoining property owner, addressed the Board. He owns the property across the creek to the south. His concern was if the property will be opened for major development. He wishes to make a statement about the possible development of the property and the re-zoning of that property in 2015 he was not notified about, not for this request.

Ms. Daily advised that his statement regarding development would probably be more appropriate for the next case involving the commercial site.

No further comments from the public.

Mr. Beiersdorfer made a motion to close public discussion. Seconded by Mr. Darling. All in favor.

Mr. Darling wanted to confirm the proposed lot split of 7.80 acres.

Ms. Daily showed the presentation slide that illustrated the proposed lot split.

Mr. Darling asked if this is a legal way to not land lock the land behind it.

Ms. Daily confirmed this would not landlock the field behind it.

Mr. Beiersdorfer made a motion to grant the variance for the 12 feet of building setback and to create a buildable lot with no road frontage at 27997 Moore Drive, Sec. 15, T7, R1, Parcel #15-01-15-004.000.006, citing the request satisfies the criteria of Article 3, Section 320 of Dearborn County Zoning Ordinance. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

- 4. Request:** A Variance for retail uses to be permitted in an M-2 District
- Applicant/Owner:** West Harrison, LLC
- Site Location:** 28051 Moore Drive
- Legal:** Sec. 10, T7, RI, Parcel #15-01-10-400-033.000-006
- Township:** Harrison
- Zoning:** M-2 **Size:** 4.8 acres

Ms. Daily presented the staff report. Refer to Article 13, Sec. 1322 and 1304 of the Dearborn County Zoning Ordinance. A variance approval to allow for retail services such as fireworks store and similar to operate in a Manufacturing Two district. The property owner is wanting to establish a fireworks store in the existing vacant building on the property. In 2015, the property owner rezoned the property from a B-2 to an M-2 district. It has been stated that they were unaware it would eliminate the uses in the business districts because of one item stated in the permitted uses under an M-1 zone. Item #2 in Article 13, Section 1304 it states "Principally permitted uses within the Business Districts, provided the primary trade area and services provided are for the manufacturing uses located within the district." The property owner was wanting this second part of the statement stricken from the requirement as a variance, but this request would be too broad for the Board to make a decision. Therefore, we have elected to reduce the broadness of the request by making the request for fireworks or similar retail services, provided that a retail business would not increase the amount of existing parking, increase the building size or require a major or minor site plan review. This would eliminate commercial uses that would increase traffic flow to the site such as banking services, restaurants or drive-through eating establishments, larger grocery stores, hotels (or related), gas stations, service stations, medical offices, veterinarian offices, etc. The property as proposed and existing through a major site plan that has been submitted (and is included in your packet), the parking is maxed out for the building size related to retail uses. If any additional improvements are required after the proposed improvements submitted with the Major Site Plan Review, permits would be required which could cause the owner to file for a zone change or additional variances/conditional use. This request would not eliminate the need for a conditional use for uses listed within B-1 and B-2 Conditional uses and criteria, unless it was a principally permitted use within an M-1 or M-2.

Mr. Darling asked if they were manufacturing fireworks there, would it be permitted.

Ms. Daily said yes. Ms. Daily advised they can manufacture certain items but they can't sell other pre-manufactured items made elsewhere.

Ms. Daily advised a major site plan has been submitted for review. In order to move forward with that building, they need for this variance to be approved. They were working with the Health Department as well due to the property being on an existing

septic system. Minor revisions were needed on this plan to be fully approved by the Technical Review Board.

Ms. Daily stated four letters were sent out to adjoining property owners. Three were delivered and one is still in transit.

Mr. Darling asked if this wouldn't have been rezoned in 2015 and the owner wanted to put a fireworks place there, we wouldn't be here.

Ms. Daily advised that is correct.

Mr. Pope advised since it is zoned M-2, they could put in much more intense uses than fireworks.

Ms. Daily advised yes.

Mr. Randy Maxwell, representative of the property owners, addressed the Board. He restricted himself when he rezoned and didn't realize that. They did not get the southern 25 acres rezoned because it was in the flood plain. His specific request regarding permitted uses was to have the last part in 1304 section be stricken. He didn't realize it said that until he submitted the major site plan review.

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

Mr. Mark Blackaby, adjoining property owner, addressed the Board and made a statement regarding the original re-zone. He was not notified of the rezone in 2015. He and his brother own an adjoining 33 Acres. His family bought additional property and have erected a historically barn. Their dream was to put the barn and cabin in a country setting. Therefore, he wants to make it known they are against the M-2 as they see it is as a threat to their culture and way of life.

Mr. Pope advised the M-2 doesn't come close to the river.

Ms. Daily advised the portion of the property closest to Mr. Blackaby's property is zoned agriculture and not at risk for development. Ms. Daily advised nothing is planned for M-2 at this time other than the existing building we're discussing tonight.

Mr. Beiersdorfer advised there are some hoops the applicant would have to go through to develop the M-2. It would require raising it out of the front plain with permissions first.

Mr. Daniel Blackaby adjoining property owner, addressed the Board. He is part owner of the property his brother just spoke about. He believes the river valley should remain

agriculture. It doesn't make sense to build up a flood plain that would destroy the whole area.

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

No further discussion by the Board.

Mr. Beiersdorfer made a motion to grant the variance to allow fireworks or similar retail services provided that a retail business would not increase the amount of existing parking, increase the building size or require a major or minor site plan review, in the M-2 district located in Harrison Township, Sec 10, T7, R1, Parcel #15-01-10-400-033.000-006 located at 28051 Moore Drive.

Mr. Darling asked if this would just be retail and they won't be shooting off of any fireworks on this property.

Mr. Pope advised this board cannot control that.

Ms. Daily advised setting off of fireworks is not specifically mentioned in M-2. The only thing referenced would be in the noise ordinance.

Mr. Darling advised across the street and up the road there are fireworks.

Ms. Daily advised most firework sales are regulated are regulated by the State. She also stated to detonate at this location may be a violation with the State due to the close proximity of another fireworks store on site and across the street.

Voting continued on the previous motion.

Mr. Darling seconded the motion. All in favor. None opposed. Motion carried.

G. ADMINISTRATIVE:

If any board members have questions regarding the enforcement report, please call Ms. Daily.

Ms. Daily provided an update on Peppertown Road pond. Ms. Daily spoke to someone at the State. Because the pond was existing, to determine if they have jurisdictional control, they have to have an as-built; Land Surveyor would have to locate the elevations of the pond.

Mr. Beiersdorfer asked what the benchmark would be for this dam.

Ms. Daily advised we have existing topography before the dam was built. The surveyor would have to use 2012 data to shoot the elevations that exist now after the dam was built. The State will not tell her one way or another unless there is an as-built. Ms. Daily advised the land owner to get a land surveyor, have the drawings submitted to Ms. Daily. If the top of the dam is 21 feet, it goes to the State. The Board's approval is based on the owner providing that.

Mr. Pope asked if the State can go out and say there are trees growing out of the dam.

Ms. Daily stated the State has to issue a permit first before we'll issue a permit.

Mr. Darling advised this could potentially flood a waterway, would the Corp of Engineers get involved.

Ms. Daily advised she hasn't heard from the Corp of Engineers. They typically get involved if it is a blue line stream.


Mr. Beiersdorfer advised he didn't block that stream.

Ms. Daily confirmed he didn't disturb it.

Mr. Beiersdorfer made a motion to adjoin the meeting, seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Meeting adjoined at 8:15pm.


Richard Pope, Chairman


Nicole Daily, Zoning Administrator