

MINUTES OF THE COOPER TOWNSHIP ZONING BOARD OF APPEALS

MEETING ON OCTOBER 28, 2021

A meeting of the Zoning Board of Appeals of Cooper Charter Township was held on October 28, 2021, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Sheryl Gluchowski, Keith Urban, Stephen Magura, David Fooy, Carol Dehaan

Members Absent: None.

Also Present: Matt Watts the Applicant, Paul Schram from Wightman & Associates on behalf of Watts Construction; Julie Johnston, Township Planner; and Township Attorney, Anne Seuryneck.

Chairperson Gluchowski called the meeting to order at 4:30 p.m.

Review and Approval of Minutes

Members of the Zoning Board of Appeals reviewed the minutes for the September 29, 2021 meeting. Chairperson Gluchowski stated she that she noticed a few typos and asked that they be corrected. A Motion by Comm. Urban was made to approve the corrected meeting minutes of the September 29, 2021 meeting, supported by Comm. Gluchowski. Motion carried.

Watts Construction Frontage Variance Request

Applicant: Watts Construction

Parcel: 02-24-101-090

Request: Variance to allow three proposed parcels to have 66-feet of frontage where 132-feet is required within the R-1: Rural Residential District.

Chairperson Gluchowski thanked the applicant and the interested parties for their willingness to allow the Board to table the consideration of their application in order to gain some clarity prior to moving forward.

Comm. Gluchowski made a motion to un-table the Watts variance request, supported by Comm. Urban.

Comm. Gluchowski opened the public hearing and asked if any member of the public would like to make a comment or address the board to please state their name and address for the record and direct their comments to her.

There being no public comment, Comm. Gluchowski closed the public meeting.

Board Discussion

Comm. Gluchowski stated that she had a few comments she would like to make. To start with Ms. Gluchowski stated that one of the ZBA considerations is any unique physical characteristics that

prevents the property from complying with the ordinance, if meeting the requirements is unreasonable burdensome, if the issue was self-created, and would a lesser variance yield substantial justice to the applicant. Comm. Gluchowski explained that the board is not allowed to grant a special privilege that is not provided to others and they cannot consider the cost of compliance as a justification for a variance. Comm. Gluchowski added that the board is required to separate want from need, convenience from effort, and cost from possibility.

Comm. Gluchowski stated that she did not find any topographical issues with the property and believes that the reason the applicant is requesting the variance is due to cost. Comm. Gluchowski remarked that the applicant purchased an incomplete housing development out of foreclosure, and she believes he does not want to complete the development because of the cost. Comm. Gluchowski stated that the Township gets requests regarding frontage variances regularly and therefor the Board must be cautious when reviewing this request.

Comm. Magura stated that he is not aware of the frontage concerns by the township residents that Comm. Gluchowski was referring to since the ZBA has not considered any of their requests.

Comm. Dehaan stated that when residents call the Township and ask what the frontage requirements are, they are told that 132 feet of frontage is required. When Township officials explain the criteria upon which a variance can be granted, most callers do not move forward with an application due to the financial nature of their request.

Comm. Gluchowski stated that the applicant bought a partially finished housing development, and it is his choice to not finish the development as planned and that the frontage issue is a self-created hardship. Comm. Gluchowski pointed out that the applicant could add the three cul-de-sacs as previously discussed to meet the frontage requirements, and therefore no variance would be needed. Comm. Gluchowski stated that she did not see any way the Zoning Board of Appeals could legally grant the applicant's request.

Comm. Urban stated that he would like to the Township Attorney to weigh in on what the ZBA is legally allowed to do.

Township Attorney, Anne Seurnyck stated that the ZBA's job is to look at the criteria within the zoning ordinance and make a determination. Members may see the situation differently, and a majority of the Board can make a determination based on the requirements.

Comm. Margura asked where it states that the Board cannot make a determination based on cost.

Comm. Urban stated that cost is in his mind have always been a part of the consideration process. He added that he is not aware of the Township defining what is unreasonable burdensome.

Township Planner Julie Johnson stated that a lot of the requirements for reviewing a variance request come from legal opinions on cases over the years.

Township Attorney Seurnyck stated that she believes the board should have the opportunity to hear the reasons why the applicant asked for the variance prior to making their decision.

The Applicant, Matthew Watts stated that he is not the original developer of the subdivision, but instead purchased the property out of foreclosure. Mr. Watts stated that the situation he is in with the property is not self-created but was something he inherited from the previous developer. Mr. Watts pointed out topographical issues due to elevation changes, and drainage concerns to the board. Mr. Watts stated that had he been the original developer the undeveloped portion of the property would not be in its current state.

The applicant added that if he were to develop the remaining property into 40 to 50 lots for homes as originally planned, it would create significant drainage issues for the existing homes in the development due to the elevation changes.

Comm. Margura asked how many parcels the applicant thought the drainage issue would impact. Mr. Watts stated that a majority of the parcels to the west of the 9-acre parcel would have issues. Mr. Watts explained that if he developed the land into the 40 plus lots, he would need to remove the wooded area that is there currently which absorbs a great deal of runoff.

Comm. Gluchowski asked the applicant if he thought that putting in a road would have much of an impact on drainage considering that water already drains off the undeveloped property in that direction. Mr. Watts explained that the amount of water draining off the undeveloped land would increase if he were to remove the woods, vegetation, and add impervious surfaces.

Comm. Urban stated that he was aware of several properties that have 66 feet of frontage down long narrow drives within the Township. Comm. Dehaan responded that those parcels were developed prior to the ordinance requirement of the 132 feet in the Rural Residential District.

Mr. Watts reminded the Board that the individuals who spoke during public comment at the previous meeting, all had concerns about the woods being removing and the development of the land into 40 plus lots.

Comm. Urban stated that he sees his roll on the board as one that serves the best interest of Cooper Township, while trying to maintain the spirit of the zoning ordinances. Comm. Urban stated that he left the last meeting with the impression that the surrounding property owners were not in favor of a phase 2 development, similar to what was done in phase one. Comm. Urban stated that there was a great deal of tension at the beginning of the last meeting, and residents were concerned with the impact the development would have on their homes. Comm. Urban explained that when the residents realized the applicant wasn't trying to develop 40 plus lots, but only trying to split the property into 4 parcels for 4 homes, they appeared at ease with the plan and were seen nodding their heads in approval. Comm. Urban stated that he could argue both sides of this application, and that this is not an easy decision for the Board to make. Mr. Urban stated that he sees this situation as one where the developer is trying to make lemonade out of lemons. Comm. Urban stated that the applicant has a difficult property to work with, and he is trying to develop it in a way that the surrounding community is in favor of while trying to be financially prudent.

s

Comm. Urban stated that he finds similarities to the 2017 case which the board approved, and this application. In Comm. Urbans opinion both properties have difficult to layouts, and the 2017

approval was in the best interest of the area and the surrounding neighbors as an approval would be in this circumstance. Additionally, the ZBA put some restrictions on the approval to ensure that the developer did what they were proposing, and not something completely different. Comm. Urban suggested that the board approve the application with some restrictions similar to what they have done in the past. First the developer would need to build the homes within a year, second each of the four homes should be required to have a 50-foot setback on all sides from the currently existing lots. With the 50-foot setback in place much of the vegetation could stay in place ensuring proper runoff and reduce the drainage concerns.

Comm. Magura stated that at the last meeting there was a question as to why the Township required the 132-feet of frontage. Since that time Comm. Magura has been informed that the frontage requirement was designed for the best interest of the township and to prevent a builder from developing multiple narrow lots with tightly packed housing. Comm. Magura said that Mr. Watts application is not one of those cases. Comm. Magura stated that applying the zoning ordinance in a literal and inflexible way doesn't protect the land development, and therefor he cannot see a reason why the variance should be denied. Comm. Magura added that the rational and spirit of the ordinance would not be violated by granting this variance, and he believes that approving the variance request would be in the best interest of the Township.

Comm. Gluchowski asked Attorney Seurnyck if the ZBA could require a larger than the legal setback requirements as a condition of approval, to which Attorney Seurnyck responded that the ZBA is allowed to add reasonable conditions to an approval.

Paul Schram from Wightman & Associates stated that he would like to address a few points that were included in the staff report. First, Mr. Schram stated that with an unlimited budget any topographical issues can be overcome, but the expense of doing so may be overly burdensome to the applicant. Second, Mr. Schram explained that prior to installing cul-de-sacs they would have to get approval from the County Road Commission to extend the public road. To obtain approval by the County Road Commission to allow construction of cul-de-sacs, plans would have to be endorsed by the Township Planning Commission and approved by resolution of the Township Board. Additional costs would also be added to maintain the cul-de-sacs, obtain title insurance, pave additional roadway, and repair any stormwater systems that were displaced during construction, and fees for the Road Commission consideration the plans. Mr. Schram mentioned that the Township would have to take on maintenance of additional roadway if the applicant went with the cul-de-sac option.

Mr. Schram remarked that due to the unusual layout of the 26-acre parcel, he does not see an individual choosing to purchase it as a site for only one home as suggested in the staff report. It is Mr. Schram's opinion that allowing the applicant to split the property into four parcels would be a good use of the land. Mr. Schram mentioned that if the variance was granted, he did not believe that additional rights were being conveyed to Mr. Watts, that had not already been conveyed to other property owners.

Comm. Dehaan stated that she agreed with the Township Zoning Administrator's synopsis and believed that granting the variance would be a deviation from the Zoning Ordinance which she feels is fairly written, therefor she is not in favor of granting the variance.

Township Attorney Seuryneck reminded the Board of the factors upon which a determination should be based were outlined for them within the staff report. Additionally Attorney Seuryneck stated that the ZBA's decision does not relate to the owner of the property, but the features of the land, therefore she encouraged the Board to only consider the variance based on the features of the property.

Comm. Urban made a motion, seconded by Comm. Magura to approve the variance request with the following conditions:

That there would be a 50-foot perimeter setback from all existing lots.

Discussion on the Motion

Comm. Gluchowski asked what criteria the motion had been based on. Comm. Urban responded that he does not believe the condition of the property requiring the variance to be self-created. He finds topographical conditions that prevent the owner from using the property for its intended purpose and that granting the variance would be in the best interest of the Township, treats the property owner fairly, and allows the property to be developed in a way consistent with the desires of the community. Comm. Urban explained that creating cul-de-sacs as a loophole that would indeed prevent the applicant from needing a variance but would only create more infrastructure for the Township to maintain and is not in the best interest of the area as it provides no functional purpose. Comm. Urban stated that the applicant's plan to develop 4 parcels with 4 homes is more consistent with the master plan of the Township, instead of developing the land into condos with small lots all lined up. Comm. Urban also stated that he believes the applicant is trying to use his property in a similar fashion as others have been allowed to do within the Township. Comm. Urban explained that granting the variance would provide substantial justice to the applicant and to the surrounding landowners.

Comm Urban found that the variance is not contrary to public purpose, believes that it is in the spirit and the intent of the zoning ordinance, it allows the applicant to use the property for its intended purpose, does not will create an adverse impact on property in the vicinity, zoning district, or township. Comm. Urban stated that approval of the variance is in line with what the ZBA had done in 2017 and therefore is justified. Comm. Urban stated that he found issues with the shape of the parcel as well as the topographical issues it presents, specifically the elevation changes.

Comm. Magura stated that he supported Comm. Urban's findings in regard to the property and adherence to the criteria and therefor supports Comm. Urban's motion.

Comm. Gluchowski stated that she still finds an issue with the applicant's plan because if he were to develop the parcel fully the drainage issues would be addressed, and it would make the topographical issue moot. Comm. Gluchowski added that the township is made up of rolling land and homes are built with hills behind them. Comm. Gluchowski stated that she understands the applicant's concerns but believes they would be better addressed with an ordinance amendment, through the Planning Commission and Township Board than through the ZBA. Comm. Dehaan agreed with Comm. Gluchowski suggestion that the issue be better handled through the Planning

Commission than the ZBA. Comm. Magura stated that even if there was an issue to take to the Planning Commission about the frontage requirement that doesn't mean the ZBA should deny this application. Comm. Magura stated that approving the variance would provide the applicant with substantial justice in this case and could send a message to the Planning Commission just as effectively as a denial. Comm. Gluchowski stated that she would like to make a clarification, in asking the ZBA to deny the variance was not doing so to make a point to the Planning Commission.

A roll call vote was taken on Comm. Urban motion, which was seconded by Comm. Magura, to approve the variance request with the condition that a 50-foot perimeter setback be required from all existing lots.

Roll Call

Magura: Yes
Urban: Yes
Dehaan: No
Fooy: Yes
Gluchowski: No

Public Comment

No public comment was provided.

Adjournment

There being no other business Comm. Gluchowski adjourned the meeting.