

MINUTES OF THE COOPER TOWNSHIP ZONING BOARD OF APPEALS

MEETING ON SEPTEMBER 29, 2021

A meeting of the Zoning Board of Appeals of Cooper Charter Township was held on September 29, 2021, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Sheryl Gluchowski, Keith Urban, Stephen Magura.

Members Absent: David Fooy, Stephanie Davis.

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 March 12, 2020 meeting. A Motion by Comm. Urban was made to approve the meeting minutes of the March 12, 2020 meeting, supported by Comm. Magura. Motion carried 3-0-2.

Public Hearing on the 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.

The Applicant, Matt Watts stated that back in 2020 he met with Township Officials regarding parcel 02-24-101-090 and his concerns with developing it due to topographical issues. Instead, Mr. Watts would like to split the property up into several parcels instead of developing 40 to 50 homes on the site. The proposed parcels would be made up of the undeveloped land that remains from the Riverview Hills Site Condominium Development. The Applicant stated that he would like to split the remaining acreage into four parcels to sell to clients with the intent that one single-family home would be built per parcel.

Township Planner, Julie Johnston explained the two different ways a developer can create a subdivision, one being a site condominium development, and the other being a platted development. Ms. Johnston explained that the applicant is proposing a platted development of four lots. Three of the lots would require a variance since they cannot meet the required 132 feet of frontage on a private road as required by the Township Zoning Ordinance.

Hillary Smiegle of 7700 Cinnamon Woods asked where the proposed homes would be built since she resides at the end of Cinnamon Woods Trail and her property abuts one of the proposed plots. Additionally, she asked if the Board could explain what was going on with the property division and how that impacted her home.

Chairperson Gluchowski stated that the ZBA isn't deciding on where homes would be built but are solely deciding if they will grant a variance allowing for the three parcels to have less than the 132 feet of frontage required. Ms. Gluchowski also described the type of land division the developers are proposing as metes and bounds parcels which are different than platted lots, like those in the subdivision.

Chairperson Gluchowski explained the roll of the Zoning Board of Appeals and the criteria upon which the board could grant a variance from the requirements in the Zoning Ordinance.

Gloria Braeburn of 3700 East D Avenue stated that her property backs up to the property being considered. Ms. Braeburn stated the survey she has of her property conflicts with the survey the applicants are using, and she thinks the property line matter should be resolved prior to the applicant receiving a variance. Township Attorney Seurnyck stated that the survey and property line issues are not things the Township could consider and should be worked out between the property owners.

Carol Miller stated that when the sub-division was previously built there was a condition that the woods be maintained for hunting and the communities use. Attorney Seurnyck explained that each property owner has property rights, including, but not limited to where they choose to build, and what activities are allowed, such as hunting. Therefore, hunting and use of the wooded area is a private matter which does not involve the Township. Comm. Urban added that it is not the Zoning Board of Appeal's job to decide what a property owner can do on their property as long as it complies with the Zoning Ordinance, and they cannot consider hypothetical situations that may arise in the future. Township Planner Johnston remarked that she is not aware of what was previously discussed with the Township Board about the woods, but regardless of those discussions the property at issue is Mr. Watts private property. If Mr. Watts would like to allow people to hunt, hike, etc. on his property that is entirely his decision.

Chairperson Gluchowski closed the public hearing.

Board Discussion

Paul Schram responded on behalf of the applicant explaining that splitting the property is within the property owners right in the R-1 district, and that doing so would have no adverse impact on the surrounding parcels. Mr. Schram asked the board how the language in the subdivision ordinance applied to this situation because all the proposed lots have widths larger than what is required but lack frontage. Mr. Schram mentioned that the staff report provided an alternative option to add frontage by creating three cul-de-sacs to meet the Township's requirements. Due to the cost associated and the amount of additional approvals by public bodies, including the Township Board and the County Road Commission, Mr. Schram did not think that creating multiple cul-de-sacs were a viable option.

Matt Watts added that he was not the original developer of the site condominium but purchased the land after the bank foreclosed on the previous developer. Mr. Watts added that in 2017 the

ZBA dealt with a similar variance request regarding the frontage requirement and that request was granted.

Comm. Magura asked why Mr. Watts didn't continue the condominium site plan instead of splitting the property into four proposed parcels. Julie Johnston stated that in looking at the approved site condominium documents, it is obvious that the original developers planned to continue the roads and add more similarly sized lots to those existing. Additionally, Ms. Johnston pointed out that the roads were stubbed out in anticipation of expanding the subdivision.

Comm. Urban asked Julie Johnston if there was anything at that would prevent the expansion of the current subdivision in the undeveloped area. Ms. Johnston stated that other than complying with the procedural things to create a site plan condominium and obtaining approvals, there is no reason why the applicant could not expand the subdivision as originally intended.

Ms. Johnston explained that if someone choose to develop the land as a planned site condominium, then the frontage requirements might be different. If the planned site condominium had public sewer and water, the developers would only be required to have 80 feet of frontage per lot, if the development had either water or sewer, they would be required to have 100 feet of frontage per lot, and if it lacked public water and sewer the parcels would need to meet the 132 feet requirement.

Mr. Watts added that in calculating the square footage of the undeveloped parcel, approximately 35 to 40 homes still could be added, while meeting the zoning requirements. Although that is an option Mr. Watts believes that splitting the parcel into 4 pieces would be better for the community and the neighboring properties.

Comm. Urban asked Township Planner Johnston if there was anything that would prevent a future parcel owner from developing multiple homes one of the lots. Ms. Johnston responded that if the Board granted the variance without any conditions, then a future owner could decide to develop any of the lots into subdivisions.

Comm. Urban stated that he believes the situation is self-inflicted and that alternatives exist. Mr. Urban went on to say that he understands the proposal which would most likely be better for the surrounding properties and provide a financial benefit to the applicant. If the Board was able to create conditions which prevent future development of the proposed parcels into subdivisions, he would be inclined to approve the variance.

Chairperson Gluchowski stated that the ZBA needs to take into consideration the variance that was granted for similar reasons, so they do not create a disproportionate burden on the applicant.

Chairperson Gluchowski read an email from Fred Schlubkegle, of 3669 East E Avenue into the record which asked that any approval include a condition requiring future buildings to be built with a 50-foot setback from his property line. Mr. Watts stated that he spoke with Fred Schlubkegle and agreed with a 50-foot setback requirement.

Township Attorney Seuryneck stated that she would like some time to review the legal ramifications of putting conditions on the variance; including the possibility of the conditions being held in perpetuity, and the likelihood they could withstand potential challenges in the future.

Comm. Urban stated that the spirit of the ordinance and the interest of the public is more in line with granting the variance.

Julie Johnston stated that it was important for the applicant to understand that the Zoning Board of Appeals is a 5-member board, but only 3 members were able to attend, therefore a unanimous decision would be necessary for the variance to be granted. She explained that if the applicant would like, he could request the ruling on his variance be tabled until a future meeting when all the board members could attend.

Comm. Urban made a motion, supported by Gluchowski to table the decision on the Watts Construction Variance request until a future meeting when a full board could attend. Motion carried 3-0-2.

Public Comment

No public comment was provided.

Adjournment

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