

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS MEETING
HELD ON JANUARY 18, 2007 IN THE CLAY TOWNSHIP MEETING HALL, 4710
PTE. TREMBLE ROAD, CLAY TOWNSHIP, MICHIGAN 48001.**

Vice Chairman Anthony Antkowiak called the meeting to order at 7:30 p.m.

1. ROLL CALL:

PRESENT: Anthony Antkowiak, Marianne Diss, John Makuch, Joanne Shirkey

EXCUSED: Ron Nelson

ALSO PRESENT: Michael Kras, Building/Zoning Administrator

2. APPROVAL/AMENDMENTS TO THE AGENDA

Motion by Diss supported by Makuch to approve agenda as presented. AYES: All.

NAYS: None. EXCUSED: Nelson. MOTION CARRIED.

3. APPROVAL OF MINUTES:

Motion by Makuch supported by Shirkey to approve minutes of December 21, 2006 as corrected: Changes to minutes: Page 2, Agenda Item #5 – last paragraph, insert “for the variance” in between the words need and was. Page 4, Agenda Item #6 – 1st paragraph, change Mary Ann to Marianne.

Minutes approved with the above corrections as stated. AYES: All. NAYS: None.

EXCUSED: Nelson. MOTION CARRIED.

4. ZONING BOARD OF APPEALS PREFACE:

Vice Chairman: The ZBA addresses mainly practical difficulty based on lot size, location and/or shape or contour and location of existing buildings. We are guided by section 27.04 of Ordinance #123. There are five (5) members on the ZBA, four (4) of whom are present tonight. Three (3) members must vote the same way for a motion to be granted for a variance. Three (3) members constitute a quorum. You may speak when so directed. Everyone will have a chance to speak. If a particular point gets belabored, the chairman has the right to limit debate. If you should not like the board’s decision, you have the right to take it to the Circuit Court. You have thirty (30) days to file with Circuit Court. When the appeal you’re involved with has finished, you are welcome to leave or stay, whatever you wish.

5. APPEALS

2006-029

Hugh Y. Vestal

8961 Colony Drive

Appellate requesting enclosed boathouse and a third boat well.

Requesting variances to allow the construction of a fully enclosed boathouse that will accommodate more than two boats. The application was denied because of Ordinance #123, Article III, Section 3.01, paragraph 7, (c) and (d).

Appellate: Current boathouse won’t house boats. Planning on tearing down current boathouse and abiding by setbacks to rebuild. There will not be a second floor and property is deeded for boathouse only. I am just trying to secure property.

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Public Participation:

In favor: Patricia Leslie 8955 Colony Drive
Ron Puwal 8499 Colony Drive
J. R. Allen 7761 Colony Drive
Dolores Watson 7378 Flamingo

Also received three letters in favor: Douglas Vossler 8963 Colony Drive
John/Lynne Pagel 8957 Colony Drive
Jerome Ciesla 8959 Flamingo

Opposed: None

Closed Public Participation.

Antkowiak: As we go into deliberations, we have to look at 5 things in our ordinance regarding a variance. Those are to determine a practical difficulty, to determine a unique condition, and then the other three, which one deals with self-creation, which you have not done that, the other two regard whether or not we have given you special privileges by granting the variance and then whether or not it would be contrary to the spirit of the ordinance. So going back to the first two, we need to deal with what you consider is your practical difficulty.

Appellate: My practical difficulty is security. There have been a number of thefts in the area.

Antkowiak: What would you consider is the uniqueness of the property that would allow us to consider giving you the variance?

Appellate: This property contains two pieces. One piece of property on the North Channel and one piece of property on the canal side. There are no residences on the canal side.

Antkowiak: I also noticed that the piece of property on the canal side is quite a distance down the street from the house property.

Discussion followed on where exactly the boathouse property is on Colony Drive and if there are any residences next to it.

Antkowiak: It also appears that we have two variances to deal with. One is for the enclosed boathouse and the other is to allow three boat wells.

Shirkey: He already has an enclosed boathouse and wants to replace it.

Makuch: I understand the enclosure. Are you digging a third well?

Appellate: Yes.

Diss: I have a question for Mike Kras. Two years ago we had a request on Colony Drive for an enclosed boathouse; did that have a second floor?

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Kras: I think they had storage area above and that particular proposed boathouse did not have an existing boathouse prior to the request to build a new one.

Diss: So it was denied because it was new construction on vacant land.

Antkowiak: I understand the practical difficulty and uniqueness of property for the boathouse, but I am having difficulty understanding the same for the third boat well.

Kras: If he puts the boathouse up with only two wells in it, he will have to tie his third boat up along the seawall behind the boathouse. He will not be able to see that boat and that creates a security issue.

Makuch: When you look at this property I can see a practical difficulty in the size of the lot and the shape and the applicant is trying to conform in the terms of the setbacks. There also is an unusual condition and that is when you come down the canal it sort of opens up into a bay and you have a lot of traffic down there from all the Bird Isles. The way that bay is a lot of things are hidden and I can see the security issues. Plus when all those boats go by with some sort of wakes and the boats get beat up. The argument with the third well is because of the location and if not allowed the third well he will be forced to tie that boat up side ways along the wall and that will cause security issues and possibly damages to his boat.

Motion by Makuch supported by Shirkey to approve Appeal #2006-029 for 8961 Colony Drive. Practical difficulty is the size, shape, location of the particular property, it was not self-created and that we allow the third well and the building to be totally enclosed for security reasons and also due to the distance from the house. ROLL CALL: AYES: Antkowiak, Makuch, Shirkey. NAYS: Diss. EXCUSED: Nelson. MOTION CARRIED.

2006-030 John Spasich (Water's Edge Bar & Grill) 7291 Dyke Rd.

Appellate is requesting a variance for the south side greenbelt.

Request for variance to allow the existing 6' solid wood fence to remain without the 15' greenbelt requirement. The application was denied because of Article XXII, Section 22.02, paragraph 7.

Appellate: The space between the building and the next door property has always been open. I had like a drive-thru opening on the side and back, but I had too many problems, like people hitting the restaurant or people with big trucks or SUVs could not go through so they would just leave and I would lose business, so I had to close it up in the back. Now I am faced with the problem of parking. So I would like to have the employees park on the side with the fence.

Makuch: So you are asking for a variance on the south side, to keep the fence there and not to have the greenbelt so you can use it for employee parking.

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Appellate: Right.

Public Participation:

In favor: None.

Opposed: None.

Closed Public Participation.

Makuch: I would like to ask Mike Kras a question. He was required to have a greenbelt on that south side and that is what he wants a variance for, right?

Kras: Yes, the south side is where the residential building is next door. We have an agreement that he is allowed to have temporary parking there. But he had to come for this variance and if the variance is approved then his site plan will be approved.

Makuch: So this variance is to keep the wood fence that he has there on the south side and he does not have to have a 15' greenbelt.

Kras: Correct.

Antkowiak: I would like to say some things as the Planning Commission representative. I gave you a copy of the minutes from December 13, 2006. There was a motion by the Planning Commission, and I know you are not restricted by what the Planning Commission says, to approve the site plan for Mr. Spasich, pending the variance granted by the ZBA for a masonry wall in place of the greenbelt on the south side. If the masonry wall does not come, this approval is not valid. It was the general consensus of the Planning Commission that if the wooden fence that is there was just allowed it would not provide the kind of protection from noise and other things to the property to the south that a masonry wall would. If we grant the variance allowing him not to have the 15' greenbelt, but placing a condition that he must put up a masonry wall, he would be done with the Planning Commission.

Discussion followed as to the correct piece of property and what is located on both sides of the restaurant.

Motion by Makuch supported by Shirkey to approve Appeal #2006-030 for 7291 Dyke Rd., as requested by the Planning Commission, to allow a masonry wall on the south side in place of the 15' greenbelt and the space between the masonry wall and the building can be used for employee parking if the owner so wishes, due to the practical difficulty of the size of the lot and the location of the current building and the fact that the building has been at that location for many years prior to the Ordinance. AYES: Diss, Antkowiak, Makuch, Shirkey. NAYS: None. EXCUSED: Nelson. MOTION CARRIED.

6. MEMBERS COMMENTS

Antkowiak: As Planning Commission Representative I would like to report that the last time we were looking at the Ordinance, we asked our Planner to come up with some language relative to

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enclosed boathouses at certain places around here. So hopefully that will be part of the Ordinance changes.

Diss: Tony you did an excellent job as Chairperson.

7. PUBLIC COMMENTS

None.

8. ADJOURNMENT

Motion by Makuch supported by Shirkey to adjourn the meeting at 8:21 pm. AYES: All. NAYS: None. EXCUSED: Nelson. MOTION CARRIED.

Respectfully Submitted,

Patty Watson
Recording Secretary