

Chair
Andrew Richards
Vice-Chair
Jeff Carpenter
Secretary
Robert Reese, III
Board Members
Steven Smith, Trustee
Donald Riel
Steve Goodwin
Adam Bertram



1401 W. Herbison Road
DeWitt, Michigan 48820
Phone 517.669.6576
Fax 517.669.6496
www.dewitttownship.org

Community Development Director
Brett Wittenberg

Township Planner
Salam Habhab

Recording Secretary
Linda K. Parkinson

**ZONING BOARD OF APPEALS
MINUTES
WEDNESDAY, APRIL 21, 2021
7:00 P.M.**

MEETING WILL BE CONFERENCE CALL AND IN PERSON

Per the State of Michigan Department of Health and Human Services (MDHHS) Emergency Order – Gatherings and Face Mask Order dated March 19, 2021, this meeting will be held both in-person, up to a strict limit of 64 persons, and virtually by phone conference. Per the MDHHS order, mask usage is mandatory, if medically tolerated, when attending in-person. Per the Open Meetings Act (OMA) 1976 PA 267, Board members and public may choose to listen and participate at the phone number below.

Meeting Dial-in: (623) 600-3750, PIN: 346832

The call will be muted to reduce interference with proceedings. The public will be invited to make comments during the public comment sections of the meeting as well as before any vote. If you desire to comment, you will be invited to dial 5* so the Clerk can unmute your line. Please contact the Planning Office at (517) 669-6576 with any additional questions.

The regular meeting of the DeWitt Charter Township Zoning Board of Appeals was called to order at 7:00 p.m. by Chairman Richards.

The Pledge of Allegiance to the Flag was said by those present.

ROLL CALL by Secretary Reese.

MEMBERS PRESENT: Richards, Reese, Carpenter, Smith, Goodwin, Riel.

MEMBERS ABSENT: 1 (Bertram)

APPROVAL OF AGENDA: Carpenter moved to approve the Agenda as presented. Supported by Smith.

ROLL CALL vote on motion:
AYES: 6 NAYS: 0 ABSENT: 1 (Bertram)
MOTION CARRIED.

APPROVAL OF MINUTES: Goodwin moved to approve the minutes of the March 17, 2021 meeting. Supported by Riel.

ROLL CALL vote on motion:
AYES: 6 NAYS: 0 ABSENT: 1 (Bertram)
MOTION CARRIED.

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

I. PUBLIC HEARING – Michael Ware Living Trust, requesting a variance of 6 ft. to the required 20 ft. side yard setback requirement for the IH (Industrial Heavy) zoning district and a 6 ft. variance to the required 40 ft. rear yard setback requirement for the IH (Industrial Heavy) zoning district to be allowed to construct a 3,520 sq. ft. building to the east of an existing building on the property. The subject site is located at 2085 Glenn Road, Lansing, MI 48906, east of Wood Road, west of US-127, south of State Road, north of Lake Lansing Road, in the southwest ¼ of Section 35 of DeWitt Charter Township (Parcel #050-035-300-005-01).

A. Open Public Hearing. **Chairman Richards declared the Public Hearing opened at 7:04 p.m.**

B. Administrative Comments/Applicant/Public Comments.

Salam Habhab, Township Planner, briefly reviewed staff’s report dated April 15, 2021 pointing out the location of the site. The request is for a 6 ft. variance to the required 20 ft. east side yard setback requirement and 6 ft. variance to the required 40 ft. rear yard setback requirement in the IH (Heavy Industrial) zoning district. If approved, the applicant would be permitted to construct a 3,520 sq. ft. addition to the east of the existing building on the property.

The site is improved with an industrial pole-style building consisting of 4,480 sq. ft. located on the northwest side of the property and is operating as a medical marihuana grow facility.

In 2020 the property was rezoned from IL (Light Industry) to IH (Heavy Industry) and is surrounded by properties zoned IL and IH.

With the proposed expansion the applicant intends to expand the business to operate under the DeWitt Township Marihuana Operations Ordinance, once the ordinance is in effect.

The existing building was built in two phases; in 1988 and 1996. The original building erected consisted of a 40’x48’ pole-style structure for parts and vehicle storage for the original owner, Senatore Enterprise. At the time, the setback requirements for the rear and side yard were required as a percentage of the lot’s length and width. In 1996 the property was granted a 9 ft. variance to the west side yard and a 27 ft. variance to the rear yard setback requirements in the IL (Industry Light) zoning district (ZBA #96-770005). This previously approved variance allowed the original owner to expand the storage building rearward; by adding another 64 ft. to bring the total building size to 40’x112’, as it currently exists.

Habhab noted it is essential to understand the background of the previously approved variance as follows:

1. The original building was built based on a different set of setback requirements with the possibility of future expansion in a length wise only, to accommodate for their business needs.
2. This requires a long building to store parts and vehicles and machines used for drilling, boring, and milling. Some of their projects were over 25 ft. long.
3. The variance was considered a direct result of changes in regulations since the original building was erected.
4. Prior to the establishment of the current zoning ordinance, the original building was a legal conforming use.
5. The new standards of the rear and side yard setbacks caused the hardship on the original owner when applied to expand the building length wise, as previously intended.

There were 11 notification letters sent regarding this request. One inquiry was received with no opposition.

With respect to the proposed site plan, staff finds the previously approved variance is construed exclusively to the expansion of the original building of 40x48 ft. In which the original owner acted upon by adding another 64 ft. to bring the total building size to 40'x112', as it currently exists. The previously approved variance does not imply granting reduced setbacks for future development within the property. Compliance with the current setback requirements of the IH (Heavy Industry) district does not prevent improvement of the property nor causes or results of practical difficulties or undue hardship on the applicant. Lastly, as shown on figure 2, the applicant has options to place the proposed addition in a manner that is reasonable and consistent with other properties in the area and in compliance with the zoning ordinance.

Habhab went on to review the request for compliance with the Variance Review Standards advising for a variance to be granted all of the four Basic Conditions and at least one of the Special Conditions must be satisfied as listed in Section 7.9 of the zoning ordinance.

Basic Condition 1 – Granting of a variance will not be contrary to the public interest or to the intent and purpose of the zoning ordinance:

1. Granting such a variance may undermine the purpose and intent of providing specific regulations to the setbacks in the IH ((Heavy Industry) zoning district. Staff finds that this condition is not satisfied.
2. As mentioned in the report, the setback requirements are intended to provide reasonable, dimensional placement of principal and separation structures on lots to ensure appropriate physical separation from adjacent structures and uses.

Basic Condition 2 – Granting of a variance shall not cause the establishment within a zoning district of any use which is not permitted by right or by special use permit within the district:

1. The current medical marihuana grower operation is permitted by right in the IH (Heavy Industrial) zoning district. Staff finds that this condition is satisfied.

Basic Condition 3 – Granting of a variance will not cause a substantial adverse effect upon property values in the area:

1. There is no reason to believe that granting a variance would have significant adverse impact of surrounding properties. Staff finds that this condition is satisfied.

Basic Condition 4 – Granting of a variance is not general or recurrent in nature to make the formulation of a general regulation for such condition reasonably practical:

1. The applicant has other options to place the proposed addition of adequate size in a manner that is consistent with the setback regulations of the IH (Heavy Industry) zoning district without the need for a variance. Staff finds that this condition is not satisfied.

Special Condition 1 – Granting a variance where there are exceptional or extraordinary circumstances or physical conditions, or topography of the property, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district:

1. As previously mentioned, compliance with the zoning ordinance does not prevent improvement of the property nor causes or results of undue hardship on the applicant. It is possible to expand the building without a need for a variance. Staff finds that this condition is not satisfied.

Special Condition 2 – Granting a variance where such variance is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district:

1. The variance is not necessary to preserve a substantial property right held by others in the IH (Heavy Industry) district. Staff finds that this condition is satisfied.

In closing, Habhab stated staff is of the opinion that the variance for the subject property does not meet all four Basic Conditions and one of the Special Conditions. Therefore, staff is recommending denial of the request.

There were no Board member comments at this time.

Chairman Richards invited the applicant to speak.

Charles Senatore, 115 ½ E. Caesar Chavez Avenue, Lansing, MI 48906, stated he is the original owner of the subject site from the year 1988. He also owned the property when the addition was built in 1996. When the first building was constructed in 1988 the setback requirements were very different from what they are now. It was based on a percentage of the lot width and the lot depth. The property is 110'x200. This meant the spacing off to the sides would be 10 percent of that width so the required spacing to the property line would be 11 feet and 20 ft. to the rear. There was no variance for the side yard setback because they were in compliance. Under these old standards the proposed new building would not require a variance. There was a variance of 8 ft. was received for the rear yard setback back in 1996. Once the first building was constructed the topography of the lot was forever changed and anchored to the original design. Now that the applicant wishes to expand the facility by constructing a 3,520 building. He agrees that they have some options to construct the building differently than proposed but none of those options works for the current business. When the 40 ft. wide new building was designed, it was designed to allow the applicant to use the interior space as effectively as possible. The tables used for growing have specific

widths and the Bureau of Fire Safety regulates the lay out requiring aisleways. In addition, the two buildings must be spaced apart from each other to prevent excessive snow loading in the original building. The buildings are proposed to be 5 ft. apart to allow for snow run off and drainage run off. In closing, Senatore stated the option of using the buildable area would require a narrower building that would not be conducive to the use inside the structure. It would also not allow the front of both buildings to be even with each other from the street view and encroach upon their parking area.

Brief discussion followed regarding electrical service to the site and how energy efficient the facility is.

Brief discussion followed regarding the loss of parking for employees if the applicant should build within the allowed building envelope.

Chairman Richards invited public comments.

There were no public comments.

- C. Close Public Hearing. **Hearing no public comments Goodwin moved to close the Public Hearing at 7:33 p.m. Supported by Riel.**

ROLL CALL vote on motion:

AYES: 6 NAYS: 0 ABSENT: 1 (Bertram)

MOTION CARRIED.

- D. Discussion and possible action by Board of Appeals.

Richards stated this decision is not just the consideration of the applicant's facility. It is also about setting precedent. When you look at the Basic Conditions and the Special Conditions the request meets 3 out of 6 conditions. He does not have questions about what the site is being use for. He is more concerned about setting precedent. He questioned why the property was rezoned from IL (Light Industry) to IH (Heavy Industry) and if the setback requirements differ from IL to IH.

Habhab advised the applicant wishes to expand the business in the future to include the recreational marihuana use, should the Township adopt an Ordinance. The applicant believes that the IH (Heavy Industry) district would allow for the continuation of the current use of the Medical Marihuana Grower and would be appropriate for the provision of Recreational and Medical Marihuana use in the future, and allow for their technological development of equipment related to growing operations. The setback requirements are the same for the IL and IH districts.

Richards questioned what the parking requirements are for this property.

Brett Wittenberg, Community Development Director, stated parking requirements will be determined based upon the types of uses within the facility. Usable space and number of employees will also determine parking requirements.

Richards noted that there did not seem to be a hardship with the property as it is flat land with a building on it. He again expressed concern with setting a precedent.

Senatore noted the industrial area within the Township is so small that he doubts there would be others requesting this type of a variance.

Smith stated it is important to note that the Township has opted into the marihuana ordinance which is quite restrictive. He feels it is much safer to grow within these facilities than for someone to grow their own plants in their homes. In addition, he feels the plan proposed by the applicant makes much more sense than building on to the existing structure and is an optimal use for the property.

Richards stated perhaps the Board members could talk through how the request might meet additional Basic Conditions.

With respect to Basic Condition 1, Smith stated the use is geographically isolated with few other options for the applicant other than to move his business to another community. In addition, adding on to the existing structure just would not look right. Taking this into consideration he feels Basic Condition 1 is met.

With respect to Basic Condition 4, Smith stated that variances are an exception to the rule. By the Township opting into the marihuana ordinance this is something the Township is going to have to deal with. The ordinance allows for strict regulation by the police, fire and building departments. In addition, the applicant has been a long time business owner in the Township and is asking to be able to use their property to its optimum.

Goodwin stated the intent and purpose of the setback requirements is to maintain safe distances for emergency purposes such as allowing space for fire apparatus. The property already does not meet setbacks on the west side. To grant another variance could cause unsafe conditions if the property can not be accessed by emergency apparatus.

Smith stated there would be access to the west and north sides.

Goodwin stated if precedent is set by approving this variance the same precedent would apply to the surrounding lots. This could create a real problem for the area in general from a safety standpoint.

Brief discussion followed regarding the fact that if the request is approved, there are still a number of steps to go through such as Site Plan Review. One of the reviewing agencies would be the Fire Department as part of the Site Plan Review process.

Wittenberg advised if the Zoning Board of Appeals has a different recommendation than staff has presented, they must provide justification how the request meets all four of the Basic Conditions and one Special Condition. Approval could set a precedent for neighboring property owners to also receive variances.

Richards stated his experience with approving a variance has been that at least all four Basic Conditions are easily met and there can be some rationalization as to how a request meets one of the Special Conditions. This request seems to meet only two of the Basic Conditions.

Habhab pointed out that, if approved, the variance would run with the property. If the property owner changes the variance is still in effect.

Goodwin moved that Appeal 21-770002 from Michael Ware Living Trust, be denied a variance of 6 ft. to the required 20 ft. side yard setback requirement for the IH, Heavy Industrial zoning district and a 6 ft variance to the required 40 ft. rear yard setback requirement for the IH, Heavy Industrial zoning district based on a determination that the request does not meet all four of the Basic Conditions and one of the Special Conditions listed in Section 7.9 of the Zoning Ordinance.

Supported by Reese.

ROLL CALL vote on motion:

AYES: 5 NAYS: 1 (Smith) ABSENT: 1 (Bertram)

MOTION CARRIED.

E. Possible Certification of Decision.

Carpenter moved to approve the Certification of Decision for Appeal 21-770002 from Michael Ware Living Trust.

Supported by Riel.

ROLL CALL vote on motion:

AYES: 5 NAYS: 1 (Smith) ABSENT: 1 (Bertram)

MOTION CARRIED.

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

TRUSTEES REPORT:

Trustee Smith gave a brief report on business conducted and action taken at recent Board of Trustees meetings.

DISCUSSION: None.

ADJOURNMENT: Carpenter moved to adjourn the meeting at 7:57 p.m. Supported by Goodwin. MOTION CARRIED.



Linda K. Parkinson-Gray, Recording Secretary



Robert Reese, III, Secretary