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Vice-Chair
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**ZONING BOARD OF APPEALS
MINUTES
WEDNESDAY, NOVEMBER 19, 2014
7:00 P.M.**

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

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

ROLL CALL by Vice Chairman Gobbo.

MEMBERS PRESENT: Jeff Carpenter, Trustee Balzer, Christopher LaGrand, Donald Riel, Steve Gobbo, Andrew Richards.

MEMBERS ABSENT: Robert Reese, III.

STAFF PRESENT: Township Planner Brett Wittenberg.

APPROVAL OF AGENDA: **Balzer moved to approve the Agenda as printed. Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Richards moved to approve the minutes of the September 17, 2014 meeting as presented. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS: None.

UNFINISHED BUSINESS:

- I. Appeal 14-770006 – From John S. and Nancy A. Huston, requesting a variance of 57 feet to the required 100 foot setback for housing of farm animals (chickens) near residentially zoned land within the A (Agricultural) zoning district, per Section 42-203 (5) (a) of the codified ordinance. The property is described as being an approximately 31.54 acre parcel located at 1428 Primrose Lane,**

DeWitt, MI 48820, south of Webb Road, north of Herbison Road, in the southwest ¼ of Section 9 of DeWitt Charter Township, (Parcel #050-009-300-006-60). **Note: This Business Item was tabled at the September 17, 2014 meeting.**

Carpenter moved to remove from the table Appeal 14-770006 from John S. and Nancy A Huston. Supported. MOTION CARRIED.

Township Planner Brett Wittenberg noted this item of business was tabled at the September meeting for the opportunity to provide additional information and to allow the Board of Appeals members the opportunity to visit the subject site.

Wittenberg explained the nature of the request and stated that the applicant wishes to keep the existing chicken coop at the current location on the site rather than relocate it to an area that would be setback at least 100 feet from residentially zoned land, as required by the Zoning Ordinance.

Wittenberg stated the applicant had expressed concern with sink holes on the property that might hinder his ability to move the chicken coop to another location. Staff visited the site with a representative of the Drain Commissioners Office on October 2, 2014. The Drain Commissioner could not locate any evidence that there was a broken tile that would cause the sink holes. It was determined that it could just be a natural occurrence of settling activity.

The Drain Commissioner made a recommendation that it may be beneficial to do some excavation on the property to determine if any other issues exist, should the structure be relocated. Perhaps placing fill dirt and compacting the soil would mitigate any further issues with sink holes.

Wittenberg provided some pictures of the subject site indicating the location of the existing structures and the topography of the property. Should the applicant relocate the chicken coop to meet the 100 foot setback requirement it would roughly be in line with the rear of the existing home.

Wittenberg also noted staff contacted the Michigan Department of Agricultural and Rural Development because there have been some recent updates to the Generally Accepted Agricultural and Management Practices (GAAMP) standards related to site selection and odor control. These standards basically broke out into four categories the different types of farms and their location to residential uses (see attached copies of pages 8 and 9 of staff's report). He noted the Township's current zoning regulations are less restrictive than the GAAMP standards.

As discussed at the Public Hearing held on September 17, 2014, Wittenberg advised, in order to grant a variance, the request must meet all four of the Basic Conditions and at least one of the two Special Conditions set forth in Section 42-70 of the Township's Zoning Ordinance. Staff's recommendation is that the request does not meet Basic Condition a) that it is not contrary to the public interest or intent of the Ordinance due to the fact that the required 100 foot setback attempts to mitigate potential nuisances related to the use.

Staff also is of the opinion that the request does not meet Special Condition a) where there must be exceptional or extraordinary circumstances or physical conditions of the site. Having visited the site, staff acknowledges there are certain areas that provide challenges. However, alternate locations exist on the site for the relocation of the structures.

Brief discussion followed regarding the addition information provided by Mr. Kevin Monroe in opposition to the applicant's request for a variance.

Balzer questioned how many days the applicant would have to relocate the structures if the variance was not approved.

Wittenberg stated, given the time of year, staff could work with the applicant on a reasonable time frame for the relocation.

Gobbo questioned how long the chicken coop has been on the property and was there a particular reason for the location that was chosen.

Chairman LaGrand invited the applicant to speak.

John Huston, 1428 Primrose Lane, DeWitt, MI 48820, applicant, stated the chicken coop was brought on site approximately six years ago. The current location was chosen because it was the only somewhat level area on the property. He advised that the pictures presented by staff are good. However, after a hard rain the sink holes become much larger. Jon Morrison of the Drain Commissioner's Office revisited the site after a heavy rain and stated perhaps there is an underground stream going through the property.

Mr. Huston went on to state he would, of course, accept whatever decision the Board of Appeals determines. He would like to address the 17 page packet of information submitted by Mr. Monroe. Mr. Monroe failed to mention the attempts made by him to address the initial issues such as noise. He got rid of ¾ of the roosters and put up a tarp to act as a sound barrier. The next thing he knew of a problem was when Township staff visited the site due to another complaint by Mr. Monroe.

Mr. Huston further mentioned that Mr. Monroe sights the Right to Farm Act in his packet of information. Huston agrees with staff that this argument is not applicable to this variance request because it is for new and expanding operations and Mr. Huston has significantly less than 50 animal units.

Mr. Huston addressed Mr. Monroe's contention that his chickens are responsible for the devaluation of his property. If Huston accepts the responsibility for the devaluation of Mr. Monroe's property he would have to also accept responsibility for the rest of the properties in the Township, State and Country. Mr. Huston has spoken personally with the Township Assessor who has assured him that his keeping of chickens has absolutely nothing to do with the drop of local assessed values and everything to do with the national real estate crisis.

Huston stated Mr. Monroe also contends that the keeping of chickens has done nothing to enhance his property value. Huston noted it is not his responsibility to enhance anybody's property but his own. The vast majority of the people in Mr. Monroe's subdivision were not even aware that he had chickens until they received a letter from the Township regarding the notice of Public Hearing for this variance request.

Brief discussion followed regarding the location and distance of the surrounding properties.

Mr. Huston stated he respectfully disagrees with staff's interpretation of the ordinance specifically the fact that approval of this request could be precedent setting. He thanked Trustee Balzer for coming over and visiting the site. He expressed disappointment that she was the only Board member that did visit the site, especially because that was the reason for tabling this request at the September Zoning Board of Appeals meeting.

Huston stated that Mr. Monroe contends there were multiple mistakes made regarding the history of the subject site. Huston clarified there have been exceptions and maybe variances but no mistakes have been made.

In closing, Mr. Huston quoted from Mr. Monroe's letter requesting the Township to "Stop the madness and do the right thing". Mr. Huston stated he is thankful he lives in a Township where there are

elected and appointed officials that do not consider it a madness for a resident to pursue an appeal to which they have a legal right to do. If this is indeed “madness” then there should not be a provision for variances in the Ordinance. From Mr. Huston’s perspective, the madness is that this issue was taken to the local Township Officials and not resolved in a rational way, neighbor to neighbor. The “madness is spending hours drafting 17 pages of irrelevant and outdated material. Mr. Huston and his wife do agree that the madness should stop and that the staff and Board Members should be addressing issues that will truly affect the growth, vibrancy and success of our community.

Carpenter stated he did visit the site and questioned if the lower level of the backyard flooded. He further asked for clarification as to whether Mr. Huston contacted the Township prior to having the chicken coop placed on his property.

Huston stated every year they have lived on the property approximately 2/3 of the lower level of the yard has flooded. He did not reach out to the Township prior to placing the chicken coop on his property because it was pre constructed. The location he chose made sense because it was an area of flat land.

Betty Stone, 1401 Primrose Lane, DeWitt, MI 48820, noted action on the request was tabled in September to allow the Board Members to visit the site and obtain additional information. She questioned why only two members actually visited the site. She stated she cross country skis in the lower area and confirmed that the back area of the site is very swampy and mucky.

LaGrand stated he did not feel the need to visit the site. He feels the law speaks clearly on this issue and he was ready to vote on this variance request at the September meeting. Visiting the site would not have changed his analysis. Other members did feel the need to visit the site. Therefore that was a legitimate reason for tabling the request.

Jean Baker, 1448 Primrose Lane, DeWitt, MI 48820, stated the subject site is directly behind her property. She does not hear or see anything related to chickens. She does not see where there is a problem at all with Mr. Huston’s chickens or chicken coops.

Gobbo questioned if perhaps they could grant an easement to the applicant so that their structures could remain where they are.

Baker stated that would be entirely up to her husband.

Brief discussion followed regarding the possibility of granting an easement to the applicant so that his structures could remain where they are.

Gobbo stated when he sees a property of this size that lacks usable area it creates a problem. However, there may be more usable area if there is an expense involved. He reiterated what was stated at the last meeting that the appeal tonight is a setback issue rather than a nuisance of noise.

LaGrand stated although he would like to work with the applicant on this, he concurs with staff’s recommendation and feels the law is clear on this issue. He questioned whether the Board of Appeals has the authority to grant a variance of this nature.

Carpenter stated he was the member who made the motion to table this request so that the Board of Appeals could all visit the site together. He now realizes it would be in violation of the Open Meetings Act to have a quorum of the Board without noticing a meeting. He also expressed concern with setting a precedent and further noted that the applicant did not contact the Township when they brought the structures on the property.

There were no further questions or comments.

Gobbo moved that Appeal 14-770006, to allow a 57 ft. variance to the 100 ft. required setback for housing of farm animals (chickens) near residentially zoned land within the A (Agricultural) Zoning District per Section 42-203 (5) (a) of the Zoning Ordinance for property located at 1428 Primrose Lane as evidenced by parcel 050-009-300-006-60 be denied. Denial is based on a finding that the request does not meet Basic Condition (a) or a Special Condition listed in Section 42-70 of the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

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

MOTION CARRIED.

Certification of Decision:

Carpenter moved to approve the Certification of Decision for Appeal 14-770006 from John S. and Nancy A. Huston as stated in the motion above.

Supported. MOTION CARRIED.


PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

TRUSTEES REPORT:

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

DISCUSSION: None.

ADJOURNMENT: **Gobbo moved to adjourn the meeting at 8:00 p.m. Supported. MOTION CARRIED.**


Linda K. Parkinson, Recording Secretary


Robert Reese, III, Secretary