

DEWITT CHARTER TOWNSHIP
1401 W. HERBISON ROAD, DeWITT, MICHIGAN 48820
BOARD OF APPEALS MINUTES
WEDNESDAY, September 19, 2007

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 Planning Director Gray.

MEMBERS PRESENT: Christopher LaGrand, Dale Glynn, Andrew Richards and Steve Gobbo.

MEMBERS ABSENT: 2 (Seeger and Reese)

VACANT: 1

APPROVAL OF AGENDA: **Glynn moved to approve the Agenda, as presented, Supported. MOTION CARRIED.**

APPROVAL OF MINUTES: **Gobbo moved to approve the minutes of the June 20, 2007 regular meeting as printed. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

I. Appeal 07-770005 – From Dale Decker, requesting a 53 ft., 11 ft. and 41 ft. variance to the setback standards for ground-mounted communication antennas listed in Section 7.13.31(3) of the Zoning Ordinance. If approved, the applicant would be allowed to construct a 98 ft. tall ground-mounted communication antenna that would be 45 ft. from the west property line, 87 ft. from the north property line, and 57 ft. from the east property line of the property located at 2075 Glenn Street, Lansing, MI 48906, in the SW ¼ of Section 35 of DeWitt Charter Township.

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

B. Administrative Comments/Applicant/Public Comments.

Assistant Planner Harmony Gmazel briefly reviewed staff's report dated September 13, 2007 pointing out the location of the site. The applicant operates Safety Systems, Inc., a private security business, on the proposed site. Mr. Decker is requesting a variance to the required setback standards to allow the construction of a 98' tower to be used as an accessory use to the existing on site office. The Zoning Ordinance requires that the proposed tower be setback from property lines, a distance that is equal to the overall height of the tower. If approved, the tower would exceed property line setback requirements by 53' to the east, 41' to the west and 11' to the north.

Gmazel noted the subject site is zoned IL (Industry, Light). The surrounding zoning consists of IL (Industry, Light) to the north, east and west and IH (Industry, Heavy) to the south. The surrounding land uses consist of an asphalt plant to the north, an automotive shop to the east, an industrial cleanup business to the south and a well-drilling business to the west.

Staff has analyzed multiple options for the applicant such as relocation of the proposed tower, lowering the height of the tower or placing the tower off-site (see pages 4 and 5 of staff's report dated September 13, 2007). The applicant does not find any of the suggested alternatives feasible.

The applicant has proposed an alternative in which the tower is built as proposed, while Safety Systems, Inc. provides some level of insurance to cover any damage or liability in the event of the tower falling onto the neighboring properties. Staff has concluded that insurance coverage alone does not adequately protect the public safety, health or general welfare as intended by the Ordinance requirements.

Gmazel advised that 16 letters were sent out notifying the public of the request. No responses have been provided to the Township.

Gmazel went on to review the request for compliance with variance standards set forth in Section 4.2.3 of the Zoning Ordinance. She advised that Basic Condition a) states that a practical difficulty or unnecessary hardship must exist which prevents the applicant from carrying out the strict letter of the Zoning Ordinance. The Ordinance intent is to contain the impacts of a tower failure on the subject property. Staff has requested to the applicant that he provide the Township with an engineering study or other evidence regarding how the tower may fall in the event of a failure. To date, no such study or other evidence regarding tower behavior has been provided. In the absence of such a study, staff cannot recommend that the request complies with Basic Condition a).

With respect to Basic Condition b), an accessory communication tower is a component of the industrial use permitted by right in the IL (Industry, Light) zoning district, so granting the variance would not allow a use not already permitted within the district. Staff finds that the request complies with this condition.

There is no evidence that the request, if approved, would have an adverse impact upon property values of neighboring properties. Certainly, if the proposed tower should ever fail, there may be a case made that if a neighbor were impacted, their property could be adversely impacted to some unknown extent. However, if the applicant were to construct an antenna that would not collapse onto other properties there is no evidence such an antenna would have an adverse impact on surrounding property values. Therefore, staff finds that the request complies with Basic Condition c).

With respect to Basic Condition d), staff finds that requests of this nature have not been recurrent. Therefore, the request complies with this condition.

Gmazel went on to review the request for compliance with at least one of the two Special Conditions set forth in Section 4.2.3 of the Zoning Ordinance. Special Condition a) states that where there are exceptional or extraordinary circumstances or physical conditions must exist preventing the applicant from carrying out the strict letter of the Zoning Ordinance. Whether the site area and topographical constraints rise to the level of an “exceptional” or “extraordinary” circumstance is up to the discretion of the Board of Appeals.

Lastly, with respect to Special Condition b), staff advised that the applicant is able to use the property for light industrial purposes, similar to the neighboring properties. The variance is, therefore, not necessary to preserve a substantial property right. Staff finds that the request does not comply with Special Condition b).

Gobbo questioned if the applicant had submitted any additional information since the September 4th Planning Commission meeting.

Gmazel advised that the applicant has submitted no additional information.

LaGrand questioned why the applicant was before the Planning Commission.

Planning Director Jeff Gray advised that the proposed tower is subject to site plan review by the Planning Commission.

Brief discussion followed regarding the feasibility of the applicant placing the proposed tower on another property. It was concluded that an off site tower is not an

option because the applicant is required to have control of the tower at all times.

Hearing no further questions, Chairman LaGrand invited the applicant to speak.

Dan Decker, representing the applicant Dale Decker, 2075 Glenn Street, Lansing, MI 48906 advised that Safety Systems, Inc. is a security and fire protection contractor. The business consists of installing security and electronic protection systems in customer facilities and then monitoring the status of the systems at their central station located in Jackson, MI. Since 1983 the company has used wireless radio communications to provide a high security link for customers using cell phone signals. Because cell phone companies will be completely converting from analog service to digital signals by February 2008 the applicant needs to utilize the proposed tower to continue business.

Decker went on to explain the reasoning behind the location of the tower pointing out that a hill exists just south of the site. The bulk of their business is located south in the City of Lansing. A 98 ft. tower is the minimum height necessary to transmit a signal. In addition, the tower must have two antennas for the purpose of a back up system. The two antennas must be located 20 ft. apart.

With respect to staff's request for an engineering study, Decker advised that he has contacted a structural engineer that specializes in communications towers to obtain a price quote on providing an engineering study. The engineer advised that there will always be some probability that a communication tower will fall its entire height. It is not possible to predict that a 100 ft tower would only fall within a 50 ft. radius. Based on the fact that any probability would violate the intent of the Zoning Ordinance, he did not feel it was cost effective to invest in a study.

Decker went on to state that the tower would not affect the public right-of-way in case of a collapse. Also, he has spoken with three neighboring businesses and they have no objection to the tower being erected as proposed. He does not feel the Township should be concerned about potential private property issues if the neighbors have no concerns and public property will not be affected. Further, the proposed tower is rated for 90 mile an hour wind speed. This is the strongest construction available. If the tower is not allowed, the only alternative for Safety Systems, Inc. is to relocate their business to an area where the tower would be allowed.

In closing, Decker pointed out that the tower needs to be located within 100 ft. of the existing building due to the phone and internet connections within the offices.

Gobbo questioned if the applicant could use a repeater system wherein a shorter tower can “piggy back” on a tower located elsewhere.

Decker expressed concern that Gobbo’s suggestion would become a single point of failure with no back up.

Gobbo noted that the applicant has provided nothing in writing from the neighboring businesses indicating that they have no concerns with the proposed tower. Contrary to Mr. Decker’s viewpoint, there is some concern about the safety of people working in the surrounding buildings. There might be a greater comfort level if the applicant made an effort to obtain easements from adjoining property owners to expand the space where the tower would be placed.

LaGrand questioned if the applicant had written statements from the surrounding property owners/occupants indicating that they have no objections to the proposed tower.

Decker stated he did not.

Glynn questioned if the applicant had considered a collapsible tower.

Decker reiterated that the engineer he spoke to advised that there is always a probability that a tower will fall the length of its height.

Glynn advised that he was part of the community that was very involved during the construction of the WILS tower in south Lansing. They were able to produce documentation that insured the tower would collapse in sections if it failed. It appears as if the applicant has not explored every option available with regard to failure.

Decker again stated that it is inherently impossible to construct a 100 ft. tower and guarantee that it will not fall the distance of its height.

LaGrand expressed that it is difficult to explore alternative options if the applicant is not interested in providing any documentation that might suggest a percentage of probability that the proposed tower would fall onto surrounding properties. The applicant should produce enough evidence so that the Board of Appeals feels they can grant a variance with confidence that the intent of the Ordinance is being met.

Decker stated that the cost of an engineering study is a fairly substantial investment. He has no assurance that the conclusion would be satisfactory enough for the Board of Appeals to approve this request. He is unwilling to speculate \$20,000 dollars for

an engineering study that might not satisfy what the Board requires in order to approve this request.

LaGrand stated he understands the applicant's view. However, the Board is simply trying to explore alternative options.

Gobbo questioned if the applicant has already purchased the proposed antenna. He further questioned if the applicant has explored alternative type antennas.

Decker stated he has not yet purchased the proposed antenna. He has explored other options. He noted that the Ordinance does not regulate flagpoles. One option he is considering is erecting a 100 ft flagpole and placing his antennas on it.

Gobbo questioned if this would satisfy the applicant's needs.

Decker stated he probably could not place his antennas on a flagpole at the height he needs. He is simply trying to make the point that they are not regulated. He has also looked at the Eifel and monopole towers. It is his personal opinion that the Eifel tower has the least amount of wind resistance and would suit his needs the best.

Brief discussion followed regarding the applicant's need for redundancy to avoid a single point of failure.

Gobbo noted the applicant expressed the need for the proposed tower because his current telephone carrier will not provide analog service after February 2008. He questioned if the applicant is aware of any other company that could provide such service.

Decker advised analog service would rely on multiple wireless carriers. However, wireless carriers are also in the process of dropping analog service.

Discussion followed regarding specific details relating to how the applicant's antenna system works.

Gobbo stated, although he is sympathetic to the applicant's situation, the issue before the Board is whether the tower would collapse within the required setback area for the safety of others.

Decker advised he has no problem providing liability insurance or perhaps a surety bond in the event the tower failed.

Gobbo stated that although a surety would address some concerns, the applicant has not provided documentation from neighboring property owners that states their support of the request being approved. He urged the applicant to explore alternative options. He questioned why the applicant has not provided additional information since the Planning Commission tabled his request for Site Plan Review 07-150003.

Gray stated that, although additional information has not been submitted, staff has discussed options A and B with the applicant. It appears as if a combination of factors might be a solution. For example, a tower that collapses and minimizes the fall zone and impacts on surrounding properties or placing the antenna on adjacent property.

Decker advised that the tower has to be within 100 ft. of his equipment within the existing building. It is not an option to locate the proposed tower on adjacent property.

There was no public in attendance for public comments.

Gobbo asked staff if the applicant would be allowed under the Ordinance to place his antennas on a flagpole.

Gray advised that once antennas are mounted on a flagpole, the flagpole then becomes a ground mounted communication antenna and would be subject to the same regulations as the proposed tower. The applicant is correct that flagpoles, used as such, do not have setback requirements.

- C. Close Public Hearing. **Chairman LaGrand declared the Public Hearing closed at 7:52 p.m.**
- D. Discussion and possible action by Board of Appeals.

Gobbo stated this is a tough situation. The applicant has an existing viable business and is faced with some shifting business issues. At the same time, he does not believe the variance request meets the necessary conditions to allow the Board to approve the appeal, based on the health, safety and welfare of the general public. He feels the intent of the Ordinance is to protect the public at large, including neighboring properties.

Gobbo moved that Appeal 07-770005, to allow a variance for the construction of a 98' radio communication tower located at 2075 Glenn Street that would be 53', 11' and 41' over the required setback standards for ground-mounted communication antennas, be denied. Denial is based on a finding that the

request does not meet Basic Condition a) as listed in Section 4.2.3 of the Zoning Ordinance. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Seeger)

VACANT: 1

MOTION CARRIED.

E. Possible Certification of Decision.

Glynn moved to approve the Certification of Decision for Appeal 07-770005. Supported.

ROLL CALL vote on motion:

AYES: 4 NAYS: 0 ABSENT: 2 (Reese, Seeger)

VACANT: 1

MOTION CARRIED.

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

TRUSTEES REPORT:

Due to the absence of Trustee Seeger, Planning Director Jeff Gray gave a brief report on business conducted and action taken at the regular meetings of the Board of Trustees held on August 27, 2007 and September 10, 2007.

DISCUSSION:

Glynn commended the Police Department and Fire Department for their timely and professional level of service they provided on a September 18, 2007 emergency call. He asked that the Public Safety Committee be made aware of his feelings.

ADJOURNMENT: **Glynn moved to adjourn the meeting at 7:57 p.m. Supported. MOTION CARRIED.**

Linda K. Parkinson, Recording Secretary

Robert Reese, III, Secretary