

DEWITT CHARTER TOWNSHIP
1401 W. HERBISON ROAD, DeWITT, MICHIGAN 48820
BOARD OF APPEALS MINUTES
WEDNESDAY, October 17, 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 Jeff Gray.

MEMBERS PRESENT: Christopher LaGrand, Dale Glynn, Steve Gobbo, Trustee Seeger.

MEMBERS ABSENT: 2 (Richards, Reese)

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 September 19, 2007 regular meeting as printed. Supported. MOTION CARRIED.**

CORRESPONDENCE: None.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS: None.

NEW BUSINESS:

I. Appeal 07-770006 – From Michael Parsley representing WMBK Holdings, LLC, requesting a variances of 1.5 feet to the required 30 foot front yard setback requirement, 5.5 feet to the required 8 foot side yard setback requirement, and 11 feet to the required 66 foot lot width requirement listed in Section 5.18.1, Schedule of Regulations, of the Zoning Ordinance for the R6 (Residential Single Family) zoning district. The applicant is also requesting to rezone the subject site located at 1050 W. Wieland Road, Lot #45-02 of Valley Farms Subdivision, in the northeast ¼ of Section 33 of DeWitt Charter Township (Rezoning Request 07-880001) from BC (Business, Community) to R6 (Residential Single Family). The requested variances would be necessary for the property to comply with the requirements of the requested R6 (Residential Single Family) zoning district.

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

B. Administrative Comments/Applicant/Public Comments.

Planning Director Jeff Gray briefly reviewed staff's report dated October 12, 2007 pointing out the location of the site. The property is currently located in the BC (Business, Community) zoning district. The site has an existing single family home on the property and is a legal nonconforming use. The applicant is requesting to rezone the property to the R6 (Residential Single Family) zoning district. That request will be heard by the Planning Commission at their regular meeting of November 5, 2007 (Rezoning Request 07-880001). It is up to the Zoning Board of Appeals discretion as to whether the variance request before them should be approved in the event that the Planning Commission approves the rezoning request.

The surrounding zoning consists of BC (Business, Community) to the north, south, east and west. The surrounding land use consists of Commercial to the north and Single Family Residential to the east, west and south.

Gray went on to describe the nature of the request advising that the R6 (Residential Single Family) zoning district requires a 66 ft. lot width, an 8 ft. side yard setback, and a 30 ft. front yard setback. The applicant is requesting an 11 ft. variance to the lot width requirement, a 5 ½ ft. variance to the side setback, and a 1 ½ ft. variance to the front setback.

The applicant maintains that he is requesting a variance to help address a situation that involves the current availability of mortgage lending options for his property. The applicant has expressed that the legal nonconforming status of this parcel is detrimental to mortgage options. This situation has led him to apply for a rezoning to R6, contingent upon an approved variance to the R6 requirements.

Forty-one (41) notification letters were sent out. As of the date of this meeting, no responses have been received.

In reviewing the history of the subject site, Gray advised that the property has been zoned BC (Business, Community) since the Township assumed authority over zoning in 1977. The existing residential structure was built sometime in the 1920's. Since the structure is a legal nonconforming use, the existing residential use can continue. However, if the residence should be damaged to more than 60% of its value by fire, natural disaster, etc. it cannot be rebuilt. The applicant wishes to sell the property. Many mortgage companies representing potential buyers are not willing to provide a mortgage on a piece of property that could not be rebuilt in the event of a disaster.

Gray went on to review the request for compliance with the four Basic Conditions set forth in Section 4.2.3 of the Zoning Ordinance. If approved, the requested variance

would create a parcel that would be even smaller than what is intended by the R6 (Residential Single Family) zoning requirements, and would not be in keeping with the intent of the ordinance. Therefore, staff finds that the request does not comply with Basic Condition a).

With respect to Basic Condition b), a residential home is permitted by right in the R6 (Residential Single Family) 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. Therefore, staff finds that the request complies with Basic Condition c).

With respect to Basic Condition d), staff finds that requests of this nature cannot be found on record in the Township. The request complies with this condition.

Gray further reviewed 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 such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and when such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance and when such circumstances or conditions shall not have resulted from any act of the applicant in violation of a prior zoning ordinance applicable to said property. Gray advised that the subject property was split from a larger lot before the Township took over zoning jurisdiction. The lot was residential well before the current Township requirements came into being. The residential use can be maintained and used as such in perpetuity without a variance. However, if 60% of the home were to be damaged, it could not be rebuilt as residential. The circumstances that affect the site are not unique and apply to all legal nonconforming properties. Therefore, staff finds that the request does not comply with Special Condition a).

Lastly, there are a number of commercial uses available to the applicant in the current BC (Business, Community) zoning district in addition to the nonconforming residential use. The variance is, therefore, not necessary to preserve a substantial property right and does not comply with Special Condition b).

In closing, Gray advised that it appears as if the variance is being pursued by the applicant for financial means, and not to address zoning restrictions. It is staff's finding and recommendation that Appeal 07-770006 be denied.

Gobbo questioned if the commercial buildings surrounding the site were built subsequent to the applicants residential structure.

Gray stated he was not certain when the existing commercial building that abuts the site was constructed. He noted that this particular area has had some incompatibility issues resulting from a commercial use being so close to a residential area.

Glynn questioned if the residential units on both sides of the site were also zoned commercial.

Gray advised that the existing residential on either side of the applicant's property are zoned commercial and are subject to the same zoning regulations for a legal nonconforming use.

Gray pointed out on the Future Land Use Map that the site, as well as the surrounding area, is planned for CC (Community Oriented Commercial).

LaGrand questioned how the Zoning Board of Appeals could take action on this request prior to the Planning Commission making a decision on the rezoning request for the parcel.

Gray stated that the Township Attorney advised that the best sequence would be to present the variance request to the Zoning Board of Appeals and then present the rezoning request to the Planning Commission. The reason being, that the Planning Commission cannot place conditions on a rezoning request. However, the Board of Appeals can grant variances with conditions. For example, approval of a variance with the condition that the Planning Commission and Township Board approve the rezoning request.

Chairman LaGrand invited the applicant to speak.

William Parsley, Loomis, Ewert, Parsley, Davis, and Gottig, PC, 124 W. Allegan Street, Suite 700, Lansing, MI 48912, stated he is the applicant's father. He feels the Township's regulations relating to nonconforming uses, which does not allow a use to continue if 60% of the home is damaged could be considered a "taking". He stated that the residential site is very comparable to the other uses in the neighborhood. Granting this variance would have no negative impact on surrounding properties as they are all approximately the same dimensions. Therefore, the request does meet

Basic Condition a). With respect to Special Condition a), Parsley stated that “exceptional or extraordinary circumstances” do exist in the fact that the subject lot and three others were all divided from one larger parcel at one time and are all 55 ft. wide. He pointed out the reason for requesting this variance is because they are requesting to rezone the property to residential. The situation does become economical when you are not able to reconstruct an existing residence if 60% of the home is damaged. He cited a 1962 case in which the Supreme Court said that “the cities and villages have the power to provide for removal of nonconforming uses by specifying a reasonable period based on the type of use, the age, and other characteristics which structures would be held invalid”. In closing, Parsley requested that the Board of Appeals approve this request conditioned upon the approval of Rezoning Request 07-880001.

Gobbo questioned what citation Mr. Parsley was referring to.

Parsley advised it is Mull vs the City of Lowell, 368 Michigan 242.

Discussion followed regarding the fact that the parcels on either side of the site are legal nonconforming residential homes zoned for commercial, just as the applicant’s property is currently zoned.

Gobbo questioned the history of those properties.

Gray advised that the subdivision was sub divided in the 1920’s. Originally, there was one larger parcel. At some point that parcel was subdivided in the four existing residential lots. The Township took authority over zoning in the mid 70’s and has no record of the split. Most likely the lots were split prior to the Township taking jurisdiction over zoning.

Gobbo noted that Mr. Parsley referred to a 1962 case and mentioned that he has an issue with the 60% threshold for not being able to rebuild. He questioned if Mr. Parsley is stating that there is some statutory authority out there that may be predating this ordinance that would tend to suggest that 60% is an inappropriate figure.

Parsley quoted from the Zoning Act “The Township Board shall provide in a zoning ordinance for the completion, restoration, reconstruction, extension or substitution of nonconforming use upon reasonable terms set forth in the zoning ordinance. In establishing terms for completion, restoration, reconstruction, extension or substitution of the nonconforming uses, different classes of nonconforming use may be established in the ordinance with different requirements applicable to each class”.

Gobbo questioned what MCL provision Mr. Parsley was citing.

Parsley stated it was 125.286. He advised that this provision has since been amended just this year.

Gobbo questioned if Mr. Parsley understood that if the residential structure on the property were destroyed by 60% or more, he would be able to rebuild anything that would conform with the current BC (Business, Community) zoning district. Gobbo noted that the applicant would not be left with just a vacant parcel. He would have some options to rebuild.

Mr. Parsley stated he understood a structure could be built. However, it would have to comply with the zoning classification of the property. In addition, it would be hard to sell the property because of the location of the site.

Gobbo asked staff what uses would be allowed on the property under the current BC (Business, Community) zoning district.

Gray advised that the lot does comply with the minimum lot size requirements of the BC (Business, Community) which is 3,750 sq. ft. The applicant's lot is just over 8,000 sq. ft. The minimum width required is 40 ft. The applicant's lot is 55 ft. wide. The front setback is 40 ft. There is no side setback in the BC (Business, Community) zoning district. However, there is a 5 ft. buffer yard required. The rear setback is 40 ft. The BC (Business, Community) zoning district is the broadest commercial classification. Uses allowed would consist of retail, restaurants, offices, etc.

Gobbo stated that in considering the applicant's request, he is faced with the dilemma that the Township has a long term plan in place to eventually bring nonconforming uses into compliance. The applicant's request is in direct conflict with this plan.

Brief discussion followed regarding the character of the area surrounding the site.

Parsley noted that the subject property is currently being used for residential. They are requesting to rezone the property from BC (Business, Community) to R6 (Residential Single Family) so that they could rebuild a residential unit if something happened to the existing house. He feels the provision that prohibits the rebuilding of a nonconforming structure if it is damaged by 60% or more is a very strange regulation. He further stated that the existing structure is being assessed as residential rather than commercial. In closing, he stated it would not make sense to use the property for commercial use as there would be no area for parking.

Seeger questioned why the applicant purchased the property. He stated that it is obvious that the lot is small and has limitations.

Parsley stated that he did not realize the property was zoned commercial until after the purchase took place.

Seeger stated he feels when the subject property, as well as the three other properties, was designated for commercial use it was doing the property owners a service. Under the BC (Business, Community) zoning district there are more options available for the use of the property.

Parsley stated that someone approved the 4 lot splits and issued building permits for the homes to be built.

Seeger stated those decisions were made under different conditions. He pointed out that S. US-127 BR is a main Business Route and should be used as such.

Seeger pointed out that, although a residence currently exists on the property, it is nonconforming.

Parsley urged the Board to grant this variance conditioned upon approval of Rezoning Request 07-880001.

Seeger questioned how the surrounding property values would be affected if one small parcel is in the middle of commercial properties. He stated it would be difficult for someone to combine some of the smaller parcels in the area and develop them for a commercial use.

Gray stated he could not speak to the property value question as he does not have an assessing background. However, Trustee Seeger has brought up a good point that explains why the properties on and near the S. US-127 BR corridor are zoned commercially. Gray further stated that the Township is currently in the process of developing a South Central Area Plan to generate more commercial development along the southern portion of S. US-127 BR. Some of the motivation to plan a deeper commercial classification is to facilitate the assembly of properties to obtain larger commercial properties along the business corridor. Nonconforming use regulations are included in the Zoning Ordinance because existing uses have the right to continue. At the same time, those uses have natural lives. If the structures on a legal nonconforming lot fall into disrepair, they have out lived their life.

Gobbo questioned how long the 60% of disrepair has been in the Zoning Ordinance and how was that percentage arrived at.

Gray advised that the 60% of disrepair provision has been in the Zoning Ordinance for the entire 9 years that he has been with DeWitt Township. He would guess that it was probably in the Zoning Ordinance since the Township has had authority over zoning. This regulation is not unique to just DeWitt Township.

Gobbo questioned if staff was aware of what percentage of disrepair other jurisdictions use.

Gray stated he does not know the numbers that other communities use. However, every community makes some determination about when a nonconforming use has exhausted its life.

Glynn stated he is aware of the regulation for nonconformities in the Howell/Pinckney area. If a nonconforming building is damaged to the extent that one wall is not left standing you can no longer build on the property. He had a personal experience in Livingston County where he sold a piece of property, the new owner completely tore down the structure and now has a \$170,000 lot that he cannot build on.

Michael Parsley, WMBK Holdings, LLC, 1124 Montevideo, Lansing, MI 48917, applicant, stated he has been a real estate broker for 22 years. He purchased the property as a foreclosure and it was very much in disrepair. He renovated the home and had three offers for the property for over \$100,000.00. At the time of the appraisal process it was discovered that the property was zoned BC (Business, Community). The potential buyer approached four different lenders and they all would not offer financing because of the Township's regulation on nonconforming uses. If he would have known of the issue earlier he would not have bought the property and the Township would have a dilapidated house. He felt he was helping to improve the neighborhood and now he is having a hard time recouping his investment. He stated there are several commercial properties along S. US-127 BR that have been for sale for two or three years. Nothing is happening on Old 27 and nothing will happen. The Township is preventing him from being able to sell the property. He had the property sold and mortgage companies would not grant a mortgage on his property because the Township ordinance will not allow the house to be rebuilt if it should be damaged by 60% or more. He stated a residence exists on his property and he will not be able to obtain a residential mortgage on the property.

LaGrand asked the applicant if he could explain again how he feels the request complies with Basic Condition a). He understands that the subject property could possibly be an R6 (Residential Single Family) parcel, but it is not an ideal property for that use. He does not understand how granting the variance would be consistent with the intent and purpose of the Ordinance.

William Parsley stated that the request is not contrary to the public interest and is not unique to the area. He stated that the Ordinance should provide for reasonable uses of the property. He feels the existing residential use is a reasonable use.

Seeger questioned if other homes in the area are on nonconforming lots.

Gray advised that the four lots that were split from a larger parcel, including the applicant's lot, are all the same size and are zoned BC (Business, Community).

Assistant Planner Harmony Gmazel advised that lots a little further west of the site are the originally platted lots and are zoned residential.

Seeger asked staff to explain why these four lots were included in the BC (Business, Community) zoning district and others to the west are in the R3 (Residential Single Family) zoning district.

Gray explained several commercial properties in the area somewhat surround the four residential lots. At some point in time the Planning Commission must have determined to include the four lots in the commercial district to avoid an "island" of residential in the middle of commercial.

William Parsley stated that Gray's explanation is purely speculation.

There was no public present for public comment.

- C. Close Public Hearing. **LaGrand declared the Public Hearing closed at 7:55 p.m.**
- D. Discussion and possible action by Board of Appeals.

Gobbo stated he has some concerns regarding this request. It seems as if there is an issue with due diligence in terms of the purchase of the property. He pointed out that a lot of effort went into the Future Land Use Map for the Township. The current zoning has not caused a loss to the applicant. There is no prejudice against the property in terms of it being a legal nonconforming use.

Gobbo moved that Appeal 07-770006, to allow an 11' variance for lot width, a 5 ½' side setback variance and a 1 ½' front setback variance in the R6 (Residential Single Family) zoning district at the property located at 1050 W. Wieland Rd., be denied. Denial is based on a finding that the request does not meet Basic Condition a) nor Special Conditions a) and b), as listed in Section 4.2.3 of the Zoning Ordinance. Supported.

Gobbo stated for the record that he does not feel establishing a variance for the R6 (Residential Single Family) zoning district is compatible with the surrounding land use.

ROLL CALL vote on motion:

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

VACANT: 1

MOTION CARRIED.

E. Possible Certification of Decision.

Glynn moved to approve the Certification of Decision for Appeal 07-770006. Supported.

ROLL CALL vote on motion:

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

VACANT: 1

MOTION CARRIED.

Glynn requested that the Ordinance Amendment Subcommittee review the 60% figure used to measure whether a nonconforming use can be reconstructed or not.

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

TRUSTEES REPORT:

Trustee Seeger gave a brief report on business conducted and action taken at the regular meetings of the Board of Trustees held on September 24, 2007 and October 8, 2007.

DISCUSSION: None.

ADJOURNMENT: **Glynn moved to adjourn the meeting at 8:08 p.m. Supported. MOTION CARRIED.**

Linda K. Parkinson, Recording Secretary

Robert Reese, III, Secretary