



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

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BROOK SMITH
CHAIRPERSON

BETH FILIP
VICE CHAIRPERSON

PETER MAIER
SECRETARY

KATHY BRADBURY
MARTY STRAUB

DON DARNELL, *ALT.*
VACANT, *ALT.*

JANIS MILLER
RECORDING SECRETARY

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Tuesday January 9, 2024

Members present: Chairperson Brook Smith, Vice-Chairperson Beth Filip, Secretary Peter Maier, Marty Straub, and Kathy Bradbury.

Absent:

Also present: Ashley Cepeda, Zoning Administrator; and Janis Miller, Recording Secretary.

- 1. Call to Order:** Chairperson Smith called the meeting to order at 6:00 PM.
- 2. Pledge of Allegiance:** Recited by all.
- 3. Approval of Agenda:** Addition of 3a) Election of Officers. Discussion regarding the requirement that the previous meeting minutes be approved before motions can be effective. Motion by Straub to move the approval of the December meeting minutes to the end of the agenda. Motion seconded by Maier. All ayes. Motion carried.

3.a) Election of Officers:

Straub suggests maintaining the current slate of officers. Supported by Bradbury.

Motion by Filip to elect the current Chair Brook Smith, current Vice Chair Beth Filip, and current Secretary Peter Maier as ZBA officers for 2024. Motion seconded by Straub.

All ayes. Motion passed.

- 4. Approval of Minutes:** Moved to end of agenda.
- 5. Public Comment – Non-Agenda Items:** Opened 6:05 PM. No public comments.

6. Action Items:

Item #1 (23-ZBA-006) Bradley Devries on behalf of Cornman, LLC

Variations:

- a) Request for variance from Section 16.12 requiring maximum lot building coverage be 11,543 sq. ft.
- a. Conflict of Interest/Ex-parte Contact Review:** None by Board members.
- b. Staff Presentation and Questions from ZBA members:**
Zoning Officer Ashley Cepeda reviewed what was in the Board packets noting: this is an approved Special Land Use Event Facility on 22.32 acres in Dexter Township, with

contiguous acreage in Webster Township. The request is to replace the tent with a commercial building in a smaller footprint. The requested lot coverage is 19,450 sq. ft. The property is zoned Rural Residential (RR) with a farmhouse, workshop, barns, hoophouse, tent, and gardens. The 2003 Zoning Ordinance allowed up to 10% maximum lot coverage, which the current 2020 Zoning Ordinance does not. The site plan, not the lot coverage, has been approved by the Planning Commission.

c. Petitioner Presentation and Questions from ZBA members:

Bradley Devries spoke on behalf of Cornman LLC: There have been no additional structures built since the previous site plan approval in 2013. They are looking to replace the tent with a structure that is smaller, for a less intense use of the property.

d. Public Comment:

i. letters and/or emails None.

ii. comments from public in attendance No public comments.

e. Zoning Board of Appeals deliberations and Standards of Review:

Deliberations: Lack of practical difficulty, nothing unique about the property. They are being penalized due to the Rural Residential zoning. The 2003 Zoning Ordinance would have let them build what they want without a variance. Suggested adjournment to gather more documentation and historical permits and variances.

Standards of Review:

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| <p>(1) Practical Difficulty §29.06(C)(1) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>The strict application of the terms of this Ordinance would constitute a practical difficulty.</i></p> | <p><u>YES</u> None</p> |
| <p>Notes: Bradbury – Based on the parameters that we have to function under currently, I would say no. Filip – I would say no because as previously mentioned all the properties are of Rural Residential District all fall under the same guidelines in Section 16.12. Straub – Agree with Beth. No.</p> | <p><u>NO</u> Bradbury Filip Straub Maier Smith</p> |
| <p>(2) Physical Conditions §29.06(C)(2) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>The practical difficulty is due to some physical condition peculiar to the property involved.</i></p> | <p><u>YES</u> None</p> |
| <p>Notes: Smith – We discussed this at length and the practical difficulty is not specifically apparent on this property.</p> | <p><u>NO</u> Bradbury Filip Straub Maier Smith</p> |

Discussion: If there is no finding of practical difficulty, how do we proceed with the next couple of questions that assumes there is practical difficulty? Chairperson Smith asked if there would be a motion based upon failure of criteria one to discontinue the rest of the choices, as it's necessary to ask all seven of these with a positive vote.

Motion by Straub that without practical difficulty the rest of the questions don't apply, so I move that we skip questions 2 – 7. No second to motion. Straub withdraws motion.

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| <p>(3) Self-Created §29.06C)(3) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>The practical difficulty is not self-created.</i></p> <p>Notes: Bradbury – The practical difficulty, if there were one, would not be self-created, in my opinion. Filip – Yes, because the issue is meeting the parameters of the Zoning Ordinance. Maier – Yes, with the caveat that this does not assume that we agree that there is a practical difficulty.</p> | <p><u>YES</u> Bradbury Filip Straub Maier Smith</p> <p><u>NO</u> None</p> |
| <p>4) Reasonable Amount Necessary §29.06(C)(4) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>The variance is a reasonable amount necessary to mitigate the practical difficulty.</i></p> <p>Notes: Bradbury – In my opinion I think that because we can't show a practical difficulty, the amount is a reasonable request, so I say yes. Filip – I have to disagree with this. No. The variance is not a minimum amount, or reasonable amount, necessary to mitigate the practical difficulty Straub – Yes, I think it is a reasonable amount in that it will result in less coverage than the current situation if the event tent were there in perpetuity. Filip – I am going to change my answer because what they're asking for is less overall, in practical terms. Maier – Yes with the caveat that we don't agree this is a practical difficulty but the request is not unreasonable. Smith – Yes, concurring with Peter's analysis.</p> | <p><u>YES</u> Bradbury Straub Maier Smith Filip</p> <p><u>NO</u> Filip</p> |
| <p>(5) Public Health, Safety, and Welfare §29.06(C)(5) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>Approval of the variance will not be injurious to the public health, safety, and welfare.</i></p> <p>Notes: Filip – Yes, because there's been no evidence that it would be. Smith – Yes, for the standards established by Beth, no evidence to the contrary.</p> | <p><u>YES</u> Bradbury Filip Straub Maier Smith</p> <p><u>NO</u> None</p> |

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| <p>(6) Adverse Effect §29.06(C)(6) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>Approval of the variance will not affect the use of the adjacent properties or the area in a substantially adverse manner.</i></p> | <p><u>YES</u> Bradbury Filip Straub Maier Smith</p> |
| <p>Notes: Filip – Yes, on two points. One is the reduction of square feet once you consider the size of the tent into perpetuity. Also, it does reduce the encroachment, even though the setback from the road is not a situation here, it does reduce that setback. So, I have to say yes on both of those points. Straub – Yes and I would add to points that Beth just made, that also the plan that was presented to us will involve smaller events, perhaps likely fewer events with less traffic in the neighborhood. Maier – I think from a planning standpoint this is a good plan, it’s just from a legal standpoint it’s not a good plan. So, from that standpoint I would be voting yes. Smith – Yes for the reasons Peter stated on the record.</p> | <p><u>NO</u> None</p> |

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| <p>(7) Intent of the Ordinance §29.06(C)(7) Does the requested variance meet the following standard</p> | <p>18.18(D)(1) Lot Coverage</p> |
| <p><i>Approval of the variance is consistent with the intent and purpose of this Ordinance.</i></p> | <p><u>YES</u> None</p> |
| <p>Notes: Bradbury – I feel that it doesn’t fit with the ordinance the way it is written so I’ll say no. Filip – I have to agree with Kathy. I’d have to say no for the same reason she said no. Straub – I agree. The only thing I can infer about the intent is what is written in the ordinance and the ordinance maxes it out at 11,745 sq. ft.</p> | <p><u>NO</u> Bradbury Filip Straub Maier Smith</p> |

f. Motion by Zoning Board of Appeals:

Motion by Filip to deny petition number (23-ZBA-006), the property located at 8540 Island Lake Road, tax id D-04-36-400-002, made by Bradley Devries on behalf of Cornman LLC, and to deny the request for 19,450.5 square feet, from the variance of Section 16.12, requiring a maximum lot coverage to be of 11,543 sq. ft. Motion seconded by Bradbury.

Roll Call Vote: Yeas – Bradbury, Filip, Straub, Maier, and Smith: Nays - None: Absent – None. Motion carried 5 - 0.

Chairperson Smith stated that the ZBA was sorry but hoped that they could get relief through the Planning Commission and Township Board.

7. Public Comment: Opened 7:31 PM. No public comments.

8. Concerns of ZBA Members, DPZ, and Recording Secretary:

a) “Reasonable amount vs minimum” Zoning Ordinance §29.06 update

The township is waiting on a brief from Bodman (attorneys) for a determination in

Documents regarding the agenda items can be obtained at the Township Hall during normal business hours, the Townships website: www.dextertownship.org and can be viewed on ew.livestream.com/dextertownship.org.

language. Planner Megan Masson-Minock sent an email stating the standard should be “reasonable amount”.

Chairperson Smith read the email into the record.

“Thank you, Mr. Smith for the analysis. Based on what you presented, I agree with your recommendation that reasonable may be the more important aspect. I’m sure the township attorneys will have further insight.”

Chairperson Smith reviewed information from Michigan State and found no case law that stated “minimum” was the standard.

Zoning Officer Ashley Cepeda said this was on the Planning Commission agenda for January 23rd.

Beth Filip put on the record: It makes no sense (to her) if the attorney hasn’t weighed in on this, and explained their position that this is going before the Planning Commission for an ordinance change where it’s clearly an issue of law, case law.

Motion by Maier: the ZBA supports a change to Ordinance 29.06(C)(4), to delete the word “minimum”, substitute the word “reasonable”, subject to review by the Township Attorney. Motion seconded by Filip. All ayes. Motion carried.

b) When do variance approvals become executable – do minutes need approval (approx. 30 days after the meeting) before the motions are activated?

When minutes are approved. Section 20.05(G) says with final adoption of minutes or adoption of resolution. This becomes a problem when an applicant needs a permit and the minutes are not approved for a month or more. Suggested that the approval of minutes and issuing of permits be two separate issues.

9. Approval of Minutes:

Amendment: remove Filip from vote on page 5 and change vote to 4-0.

Motion by Maier to approve the minutes as amended. Motion seconded by Straub. All ayes. Filip abstains. Motion carried.

10. Adjournment

Chairperson Smith declared the meeting adjourned at 8:18 PM.

Respectfully submitted,

Peter Maier, Secretary

Janis Miller, Recording Secretary