

**Whitewater Township Zoning Board of Appeals
Minutes of 08/27/09 Regular Meeting**

Call to Order

Acting Chairperson Bowen called the meeting to order at 7:00 p.m. Bowen informed the applicant that, because there is not a full board present, the meeting can be postponed until next month, if requested by the applicant. Applicant, Clayton Arnold, said he would like to continue with the meeting as scheduled.

Roll Call

Members Present: Benak, Bowen, Miller and Halstead
Members Absent: Chairman Millar (excused) and Lake (excused)
Also Attending: Planning/Zoning Administrator Meyers,
Recording Secretary MacLean and two others.

Set/Adjust Agenda

No adjustments to Agenda.

Approval of Minutes

Benak motioned for approval, seconded by Halstead, to approve the 4/23/09 Regular Meeting Minutes. **Motion Approved 4-0.**

Business Session:

Public Hearing on Appeal #A3-09, Clayton & Marie Arnold: 28-13-008-003-00

Hearing to consider a variance from Article 12.11, Schedule of Regulations to divide an 80 acre parcel of land that will result in a 5 acre parcel with 234' of road frontage where 300' of road frontage is required. This parcel is located at 4505 Moore Rd. Required notification was sent to four parcels. Notice of public hearing was sent for publication August 13, 2009 to the Elk Rapids News.

Open Public Hearing

Bowen opened the public hearing at 7:05.

Zoning Administrator Presentation

Meyers visited the site with the applicants and finds the proposed size, 931' x 234', meets the current ordinance measures of a 4 to 1 ratio as well as minimum lot size. The 80 acre parcel is on a hill with a large expanse of wetland located along the northeast corner of the property. Because of the hill, site distance is very limited by the health department. Using a rough site drawing, Meyers demonstrated where the Road Commission has approved a drive/road, which is just south of the designated wetland area that runs along Moore Road. Zoning Administrator recommends approval of a 66' lot width variance setback based on the following conclusions:

- The problem is a unique situation not shared in common with nearby property owners due to wetland and site distance limitations.

- Granting the variance will not alter the essential character of the area as the parcel would still contain 5 acres and smaller parcels are present in the area.
- The problem is not self-created.
- Without the variance, the applicant would be required to waive future development of the proposed 75 acre parcel or require immediate development of the entire site in order to secure site distance/access.
- The property could not utilize future development potential without the request variance.

Conditioned upon the submission of a formal survey and land division application that is consistent with the submitted request.

Petitioner Presentation

There is a nice size area that would be appropriate for building on the remaining 75 acres. Property was sold two years ago but it wasn't approved because it did not meet the ordinance mandates at that time. That is when the Arnold's built their present home out on Elk Lake. Mr. Arnold feels that the 300' road frontage would make it almost impossible to sell the remaining 75 acres.

Report on Site Visit

Benak: Question regarding the county's granting of the site distance "variance".

Meyers: Not a variance by the county just an approval at a certain location for site distance for the drive / road into the remaining 75 acres. Not mentioned in the report, there is an alternative. The alternative would be that in order to access the property, it would require going into the wetland. He would have to be granted, by the state, a permit to fill the wetland. The wetland is a very important part of the community; it's a valid flood plain area. The state would then require creating a wetland to replace what is filled by, up to a 4 to 1 ratio. We have a safe visible access point so he could still do what he needed to do. I don't want to make almost 75 acres of someone's property unviable.

Benak: Replacing the wetland could be very expensive.

Meyers: Cost is not to be taken into consideration by the ZBA in making these decisions. Health, safety and welfare is to be taken into consideration and the wetlands is part of our community's health and welfare. Preserving that wetland is better than filling it in and creating a new one at a future date. It is doing its job the way it is.

Bowen: Does the wetland fill up? It seems pretty dry.

Mr. Arnold: You can walk through it. It has one of the beginnings of one of the tributaries of the Williamsburg Creek. Most of it is underground.

Bowen: Unable to build on because it won't perk?

Mr. Arnold: Yes

Meyers: It is on the wetland maps as regulated wetland.

Halstead: Favorable in my opinion. This seems to be the lesser of two evils, granting a variance instead of having to cross a wetland and fill that in.

Benak: I don't have a problem with it. With the county granting him the site distance, with the property being on a hill, for safety issues and preserving the wetland is a big deal. It is not something he self created.

Miller: The road commission is happy with where the driveway is going to be. So if they are good, I'm good with it too.

Bowen: I'm seeing the same things as previously mentioned, with the drive running along the fence line.

Meyers: The drive would come in by the wetland.

Benak: This would save a lot of big, old, beautiful trees, too, going around them. Is that your plan?

Mr. Arnold: I went to the county and they gave me a tentative permit for access. There is quite a depth of high and dry ground to leave a nice location for a home.

Public Speaking in favor of Appeal:

Paul Tyrer, of 9337 Ayers Rd., Williamsburg, MI, 49690, is in favor. He has walked the property. The creek flows underneath the property. It is not marshy in summer, winter, fall or spring. It is the only spot to get into the property.

Public Speaking in Opposition of Appeal:

None.

Mr. Arnold indicates that he approached all of the neighbors and none expressed opposition. Most every body owns large pieces of land around there.

Anyone else who wishes to speak on this appeal:

None.

Correspondence:

None.

Close Public Hearing on Appeal #A3-09 at 7:21 p.m.

Discussion on Appeal:

Bowen: Applicant, without the variance, would be required to waive future development of the proposed 75 acres. It is quite obvious that there is not any other way to put in a drive. Other access option would be to maybe park on the road and use the 75 acres strictly for hunting land. There is no opportunity if we go with the 300' width.

Halstead: I think we all agree that the problem was not self created.

Bowen: It is all part of the flood plain.

Benak: It will not alter the essential character of the area. The Road Commission approval is a big one for me, so the health, safety and welfare is all covered. And it is preserving the wetland.

Bowen: My thought is that we should grant this variance.

Benak: I'm thinking so.

Miller & Halstead: I am too

We can get a motion to pass this variance. A yes would be to approve the variance.

Benak makes the motion to approve the 66' width variance from the required 300', Appeal #A3-09, variance from Article 12.11, Schedule of Regulations, with the findings of fact:

1. It is not a self created issue;
2. Site distance has been granted by the county;
3. It preserves the wetland;
4. Without the variance applicant would likely have to waive future development of the 75 acres;
5. It meets the health, safety and welfare standards.

Motion Seconded by Miller.

Bowen: The conclusion is that the variance should be approved for the reasons stated. A yes vote is to approve the variance as set forth.

Roll Call Vote:

Benak – Yes

Bowen – Yes

Miller – Yes

Halstead – Yes

Motion carried, 4-0

You have your variance Mr. Arnold.

Meyers: You will need a formal survey for land division.

Other Business:

Zoning Administrator Report on ZBA Article 18

ZBA Article 18 update

After much discussion with the Planning Commission Article 18 has been recommended for approval by the Planning Commission and it is now at the County for review. They will recommend approval, denial and/or suggest changes. After County recommendation it will be taken to the Township Board for consideration. Article 18 of the Zoning Ordinance has been rewritten to address use variances and streamline the process by which the ZBA will operate. If Article 18 is approved it would be appropriate for the ZBA to have an education seminar on use variances.

Motion to adjourn by Halstead, second by Miller. Adjourned at 7:46 p.m.

