

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS  
REGULAR MEETING OF FEBRUARY 26, 2015  
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7 p.m.

Roll Call: Bowen, Benak, Halstead, Lake Absent: Lyons

Also in attendance: Recording Secretary-MacLean; Interim Zoning Administrator, Ron Popp; Court Reporter Kathy Tulick, CSR #4806 of Northwest Reporting; and 38 in audience.

Due to lack of water and bathroom facilities meeting recessed at 7:04 and reconvened at Mill Creek Elementary School at 9039 Old M72, Williamsburg at 7:20 p.m.

Meeting called back to order at 7:20 p.m. at Mill Creek Elementary

Roll Call: Bowen, Benak, Halstead, Lake Absent: Lyons

Set / Adjust Agenda: Set

Approval of Minutes: Motion by Benak, second by Lake to approve minutes of May 22, 2014, Regular Meeting. All in Favor. Motion Carried.

Motion by Benak, second by Lake to approve minutes of August 7, 2014, Special Meeting. All in Favor. Motion Carried.

Scheduled Public Hearings:

A. A-15-002

- a. Open Public Hearing on Appeal #A-15-002, at 7:27 p.m., Kerry W. Ferguson, Dale Schmidtendorff, Stan and Jill Jankowski, Tony and Mary Randazzo, Karen and Jim Marco, Dave and Mary Jankowski, Phil and Claudia Eisenberg, Pat Pokay, Linda Grandstaff, Jay and Tami Holden, Carrie and Tim Rutkoski, Rashid F. Kysia, Greg and Cathy Edmonds, Dave and Mary Shick, Edward and Maureen Guertin, Steven and Kathryn Holl, Robin Hagan, Jill Saarela, Gerard Engler, James and Lorraine Ehle are appealing a Use by Right decision made on November 6, 2014, by the Whitewater Township Zoning Administrator regarding an application for site plan review submitted by Horse Shows by the Bay. Additionally, the applicants are asking for an interpretation of the Zoning Ordinance; more specifically, is the Proposed Use a Riding Academy or Stable and therefore a Use by Right. The parcel in question is located in Section 31, Town 27 North, Range 9, West, Whitewater Township, Grand Traverse County on the south side of Supply Road, west of Island Lake Dr., parcel ID 28-13-031-002-02 and 28-13-031-005-01.
- b. ZA Presentation Public notices published and mailed. Most of the information in the packet comes from the Whitewater Township (WWT) Zoning Administrator (ZA) of record at the time of the Use by Right determination, Horse Sports and Karen Ferguson. No questions regarding packet information.
- c. Petitioners Presentation Karen Ferguson, Attorney for appellants, representing 20 families. Brief run through of information presented in packet. Is Horse Shows by the Bay (HSbtB) a stable and riding academy or a festival? It is not a moot point even if HSbtB has pulled their request. The Zoning Ordinance is clear that stables and riding academies are allowed in the district. Festivals are not allowed. Various definitions of stables and riding academy presented. The application of HSbtB presents itself as a festival. Definitions of festival presented. Noise and traffic counts concerns. Information presented by HSbtB indicates 4,500 people to 10,000 people a day or week. It is contrary to principles intended to protect the natural resources and rural character of the district. HSbtB is a festival not a riding stable. Requesting the ZBA reverse the ZA decision. Notice of the violation of stay. Logging has been being done on the property. Lastly, the submission by Mansfield working with HSbtB, indicates that it is considered a Right To Farm Act case. Ferguson disagrees.

d. Report on Site visit members note: Lake, how much of the property would be used? How many people live on the lake? 86-90 properties. Bowen: Nice section of woods.

e. Correspondence None.

f. Public speaking in favor of appeal

*Karen Marco* 198 Island View Dr. As presented in packet, zoning for the Supply Road property does not allow for a festival. Spread sheet presented in packet. Nine sites where these festivals are held are in Ag districts including, locally, Acme and 9 require special use permits, including Acme. Please grant the appeal.

*Jim Marco*, 198 Island View Dr. Speaking for Stan Jankowski of 8 Island View Dr. As presented in packet, NAICS 713990 is an inappropriate categorization of HSbtB. It should be 711310. WWT Zoning Ordinance #11 does not allow 711310 by right or by special use permit. The ZA made an error. Asking the Zoning Board of Appeals (ZBA) to reverse decision.

*Robin Hagan*, 142 Island View Dr., from Union Township. As presented in packet. This is a huge equestrian festival. The Zoning Ordinance (ZO) does not define a stable or riding academy. Concerned about the health effects on the lake, ground water and drinking water with 4,500 gallons of horse urine going into the ground in four weeks. Who will supply Island Lake residents with municipal water should the waters become contaminated?

*Claudia Eisenberg* 356 Island View Dr. Personally oppose, decrease in property values, quality of life. Is HSbtB a riding stable or academy? Documentation presented is clear. HSbtB's own definition states it is a festival. Request to reverse decision.

*Mike Nichols*, 5774 Supply Rd., East Bay. East Bay voted to keep Supply Rd. a scenic corridor. HSbtB is a commercial venture. Keeping the area free from enterprise is one thing we need to keep track of.

*Katie Lutz*, 190 Island Lake Dr., not an appellant but do support the appeal. Home is 100 feet from the property. Disagrees with the ZA decision that it is a use by right in this recreational district. Will not meet goal of keeping a rural community as the Whitewater Township Master Plan (MP) states. Reverse the ruling of the ZA.

*Dave Jankowski*, 117 Island View Dr. Chose the site for the peaceful wooded site setting. WWT MP and ZO prohibited a previous home development on this same property. Needs to be reviewed regarding zoning requirements. Concerned about the noise from construction, set up, loud speakers and traffic. Sound easily carries across the water. The Township Board and Zoning Administrator are not following the Township Zoning Ordinance and Master Plan. Why has the Township Supervisor failed to enforce the stay of the clear cutting on the property?

*James Ehle*, 268 Island View Dr., next to the 100 foot buffer. Appellant to the zoning decision. Agree with many of the comments made previously. Express our concerns. Acquired property in August of 2014, specifically chose Island Lake because of the peace and quiet. Eagles and other wild life will be disturbed. Concerned about the loss of value of property with the large commercial activity so close. We weren't given proper due process by the ZA. The ZA noted that there are 67 amendments to the zoning ordinance and difficult to pull all together. My understanding is that it is currently under review by the Supervisor and the Clerk to determine accuracy of the document. The ZO is the law and he (ZA) is not able to make a proper decision, he doesn't even know what he is working with. Concerned about the way it was decided upon.

*Steve Holl*, 434 Island View Dr. Urge you to reverse the zoning decision. Clearly believe an error was made when the application was approved as a use by right. Moved from TC, got away from the Cherry Fest. We like the quiet of the area. Please reverse the ZA decision

*Jill Saarela*, 12 Island View Dr. Very concerned about the traffic, the people coming around the area and safety. 30 year resident, very quiet, very enjoyable. We couldn't get approval to fill in a small wetland, don't know how the clear cut of 110 acres could possibly be approved by the DNR. It is a travesty. Hope for a reversal.

*Greg Edmonds*, 428 Island View Dr. Purchased in July of 2014, wanting to get away from everything,

now it will be right in our back yard. On the record, that HSbtB is not a riding stable or riding academy and ask the ZBA reverse the ZA decision. The HSbtB website clearly states that it is an equestrian festival.

*Pat Pokay, 452 Island View Dr.* We have seen a lot of change but it has remained quiet and rural and would like to keep it quiet and peaceful. Based on their own publicity it is a festival. Very inappropriate for this zoning. Water quality issues. Property value will likely decrease. HSbtB is not a riding stable and the decision to let it take place in the recreational area should be reversed.

*Gerard Engler, 240 Island View Dr.* We have a MP in place to keep commercial industries in commercial areas.

*David Knopp, 446 Island View Dr.* It is a recreational area, looking for compassion for the people in the area. HSbtB does bring a lot of money to the area but it is just the wrong place for this venue.

*Marcia Muggs, 422 Island View Dr.* Consider the eagles and the wildlife. Cannot put a price on the majesty. It should not have gotten this far to begin with.

g. Public speaking in opposition of appeal

*Bethany Warner, 107 Cass St. Traverse City, attorney for Horse Sports Property LLC (HSP).* HSP has submitted a response for your later review. HSP has withdrawn application since a site plan review is needed. The site plan review will include public comment. Because of the withdrawal there is no need to decide on the appeal regarding the ZA decision. Interpreting the ZO may be premature since there are no pending applications in WWT for a huge festival event. Definitions of riding academy presented. Request that you use the same definition as the Michigan townships. Riding academies are a business. RTF Act is not subject to WWT zoning. RTF has its own standards. Horses are farm animals. HSP request for you to not rule on administrative decision or interpret meaning of riding academy or stable since there are no pending applications for riding academy or stables in WWT. If you choose to interpret riding academy or stable, we request that you use the meaning assigned by other Michigan townships and assign the meaning set forth in the Michigan Horse Riding Stables and Sales Barn Act.

*Doug Mansfield, Mansfield Land Use Consultants, 830 Cottageview Dr., Suite 201, Traverse City, Michigan, consultant to HSbtB.* Pictures speak a thousand words. This not a popularity contest. It is about what is allowed in the township. This was a very openly discussed process from the beginning including meetings with owners and participants of Island Lake, selected by the Island Lake Association and invited their attorney. You have no definition for riding academy in your ordinance. You are then left with other definitions and practical application of industry terms. Presented in the packet are sixteen riding academies from across the state of Michigan. Jumping, training, vendors, shows and events are part of the riding academies. Definition of riding academy presented. Nothing is defined in the ZO, there are no specifics and that is not what you are here to determine tonight. You've got a lot of information in front of you.

h. Anyone wishing to speak on the appeal *Dick Culver, 300 Island View Dr.* From a point of view, this is just plain business, a money making business. Not against someone making money. We are worried about our neighbors and Island Lake. When this activity starts there will be a lot of trouble, trespassing, vandalism, break-ins, etc. We do not want that in our area. Island Lake is one of the most pristine, quiet areas you can dream of. Asking the board to vote in favor of the appeal.

i. Close Public Hearing at 8:41 p.m.

j. Discussion of appeal *Lake:* It is not a black and white situation. *Benak:* Here tonight to decide if it is a use by right as determined by our ZA according to our ZO. The application has been pulled. Is it a use by right? The ZA did the best he could and looked for industry standards. I believe he chose the wrong NAICS code. HSbtB uses the word festival. *Bowen:* It is described as a festival. *Benak:* RC1 lists clearly the use by right options. *Benak's* opinion is that the ZA used the wrong code and it should be 711310. *Halstead:* Does not fall under stable and riding academy definition. *Bowen:* Looking at the information

presented and the initial application and the appeal, we are here to interpret. Bowen's opinion is that HSbtB is not a stable or riding academy and does not fall within that parameter of our zoning ordinance.

- k. Decision Based on the application presented by HSbtB this not a stable nor a riding academy. Because of that it is not a use by right.
- l. Motion by Bowen in favor of the appeal to reverse the Zoning Administrator's decision regarding a use by right of the Horse Shows by the Bay application, second by Halstead.  
Roll call vote: Benak-yes; Halstead-yes; Lake-yes; Bowen-yes. Motion carried.

Additionally, the Zoning Board of Appeals will request the Planning Commission look more closely at the definition as set forth in the Zoning Ordinance.

Break at 8:56 p.m. to 9:08 p.m.

B. A-15-001

- a. Open public hearing at 9:09 p.m. on Appeal #A-15-001. Edward and Maureen Guertin, 542 Island View Drive, Traverse City, MI, 49696, parcel id: 28-13-390-007-00, are requesting a variance from Article 12.11 of the Whitewater Township Zoning Ordinance Schedule of Regulation. Specifically, the applicant is requesting a 23 foot variance from the 30 foot front yard setback requirement to construct a 24'x24' accessory building. The parcel in question is located at 542 Island Lake Dr.
- b. ZA Presentation This is a standard appeal. Details are in the packet provided. The ZA recommends a 16.45 variance as that appears to be the average in the area and would be the minimum that would be necessary. Existing dwelling was built without a variance. This lot is buildable at the set back. There are road and utility easements around the lake. This is not a road right of way issue as we have seen in other areas. Setbacks are from the property line, not from the edge of the road.
- c. Petitioners Presentation Ed Guertin, 542 Island View Dr. Trying to use the property in an aesthetic, non-intrusive manner. Would love to build where zoning says to build but our land is not set up for that. It would be on a steep hill, 60 feet from road. Every foot moved back is another expensive addition to the project. Does not want to cut down the 30 additional trees that would be required. Garage will be 30 feet off the edge of the road. There are other garages that are that distance and closer than this is. Not asking for more or different than others have already gotten.
- d. Report on site visit Bowen, did visit and notice the lay of the land is exceedingly steep. Halstead and Lake visited and noticed the same. The well is on the other side of the house.
- e. Correspondence None
- f. Public speaking in favor of appeal  
*Andy Sill, 560 Island View Dr.* Interesting insight about the lots, these lots were platted in the 1940's before there was zoning. Then zoning comes along and makes minimum lot sizes. Sill owns the property on the garage side and is in favor of the variance and keeping the trees.  
*Mike Nichols, 5774 Supply Rd., East Bay.* Lot sizes around the lake are an issue. Would like to grant the request.
- g. Public speaking in opposition of appeal None
- h. Anyone in attendance who wishes to speak None
- i. Close public hearing at 9:30 p.m.
- j. Discussion on appeal There are no changes. He will cut down fewer trees with the variance. Looks good. Does it meet the guidelines for a variance? Shared larger map with members.
- k. Findings of fact Causes an unnecessary hardship. It is due to unique circumstance and is similar to neighborhood. It is not self-created. Granting of variance would not alter the character of the neighborhood. It is not contrary to public interest. It is not a health, safety and welfare issue. The variance will do justice to the applicants. It is in the spirit of the ordinance. 23' still keeps it 35' off the road.

- l. Conclusion A 23' variance vs a 16'6" variance. The smaller variance would be a more unsightly structure with more trees being cut down. Appropriate to grant the 23' variance.
- m. Reasons for conclusion based on the findings of facts: Causes an unnecessary hardship. It is due to unique circumstance and is similar to neighborhood. It is not self-created. Granting of variance would not alter the character of the neighborhood. It is not contrary to public interest. It is not a health, safety welfare issue. The variance will do justice to the applicants. It is in the spirit of the ordinance. 23' still keeps it 35' off the road.
- n. Decision to grant the variance.
- o. Motion by Lake to grant a 23' variance from 30' yard setback requirement from Article 12.11 second by Benak.  
Roll call vote: Halstead-yes; Lake-yes; Bowen-yes; Benak-yes. Motion carried. Variance approved.

Other matters to be reviews by the ZBA

Correspondence: None

Annual review of ZBA By-Laws

Discussion of by-laws and standard agenda.

Consensus to hold off By-Laws and selection of officers off until next month.

2015/2016 Regular Meeting Schedule

Approval of resolution #ZBA15-01 schedule of 2015/2016 fiscal year regular meetings.

Motion by Lake, second by Bowen to approve Resolution #ZBA15-01.

Roll call vote: Benac-yes; Halstead-yes; Lake-yes; Bowen-yes. All in favor. Resolution approved.

Benak announced that she is resigning as the Township Board Representative. She will continue until the Board appoints the replacement.

Next meeting March 26, 2015.

There is a case scheduled for March plus the By-Laws and selection of officers.

Adjourned at 10:21

Respectfully submitted by  
Recording Secretary  
Lois MacLean