

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
Minutes for Regular Meeting on Thursday, August 24, 2023
7:00 p.m. at the Whitewater Township Hall
5777 Vinton Road, Williamsburg, MI 49690
Phone 231-267-5141/Fax 231-267-9020

Call to Order by Chair at 7:00 p.m.

Roll Call: Bowen, Lake, Garza, Wroubel

No alternate to the ZBA, Board Representative-unassigned
17 on zoom

Set/Adjust Agenda - Set

Declaration of Conflict of Interest - None

Public Comment -

Kim Elliott – count in the room is at 65

Approval of Minutes:

MOTION by Lake, second by Garza, to approve minutes of May 25, 2023.

Roll call: Lake-yes; Garza-yes; Wroubel-yes; Bowen-yes. Motion carried.

Scheduled Public Hearings:

Case #ZBA-2023-ZA Parcel Id: 28-13-136-001-02, zoned A1-Agriculture, 6631 Baggs Road, Williamsburg, Michigan

a. Open Public Hearing on Appeal #ZBA-2023-ZA at 7:07 p.m.

Applicant: Baggs Partners, LLC, 53 Easthampton Ct. NE, Grand Rapids, Michigan

Owners: Derek Van Solkema, Ryan Sheffer

Agent: Gary Van Solkema

Requesting an appeal of the May 3, 2023 administrative decision of the Whitewater Township Board and seeking a variance from the 4:1 depth to width ratio stated in section 7.D of Ordinance No. 26 (Land Division Ordinance)

Public hearing notice was posted in the Record Eagle on August 6, 2023, and notices were sent to property owners as in the tax rolls per the assessor of Clearwater Township and Whitewater Township, within 300' of the property subject to this public hearing at least 15 days prior to the public hearing.

b. Zoning Administrator Presentation: In addition to the report in packet, Hall notes: Contrary to the actual application to appeal the Township Board decision, this is only a request for a variance as stated in the ZA report and the township attorney report.

This is different than most cases we normally see at the ZBA. You have been referred a variance from the Township Board.

Make it known that there is a lot of complicated material.

The township attorney is here to answer questions if you have any regarding their report.

Appellants are given an opportunity to share their information.

ZBA bylaws allow the ZA to make an opinion. This is not an appeal on something the zoning administrator has made a decision on. This is an appeal as referred by the Township Board.

c. Petitioner Presentation: In addition to the information provided in the packet, Ryan Sheffer representing Baggs Partner LLC, states, "Our goal is to be a good neighbor. We would like to move into this area. Surprised we are here."

There are five conditions that must be met regarding the appeal:

Exceptional topography – that is why the ZA allowed the land division in 2020.

Strict compliance to #26 - there are hundreds of parcels in the township that do not meet the 4:1 ratio.

Not cause harm. Tax values should increase. Neighbor split 10 acres into 5 parcels.

Health, welfare and safety. Best practices will be followed.

Minimum variance. It is the last ditch effort to save our property.

Derek Van Solkema – thank you for coming out and hearing our request. We want to be a part of this community. Coming here for 22 years and have had a dream of living here like so many others here. We did our due diligence before purchasing. This whole thing has been very taxing on our family. We want to be part of the community. Purchased in 2022 and the ensuing 20 months have been a nightmare. Land split was approved in May of 2020. We reviewed all documents and did our diligence. Why was it not an issue when the Debonos were looking to build a home? Our country allows and respects personal property rights.

Grand Traverse County Road Commission did not have a problem with the road.

Derek read through an email of support.

Neighbors have expressed the ratio issue, but it did not come up previous to that. Why are we being targeted?

People are trespassing on our property.

A minority of voices want to control property they do not have control over. FOIA request produced a lot of redacted information.

Derek read an email from Clerk Goss regarding the Supervisor working with the Hymores before a complaint was formally presented to the Board.

Paying full taxes for a property that is deemed unbuildable.

Have never received any response from emails to the Supervisor.

It is wrong that it was handled the way it was.

We stand before you tonight to request approval of the variance.

Michael Herring, Van Solkema attorney:

It comes down to a split made in 2020 based on the ordinance.

Unreasonable burden is taking away 80%-90% of the value. That is \$200,000 taken away of the land value based on a decision by the township board.

Request for variance.

Property is similar to surrounding properties.

Passed out some emails from the Township Treasurer regarding cases of the 4:1 ratio during her time as the Board Representative to the ZBA.

There are over 100 properties on Skegemog Point Road that do not meet the 4:1 ratio.

All we are trying to do is make it buildable.

No health, safety and welfare concerns.

d. Report on Site Visits:

Bowen notes that it is a big parcel.

Lake has questions about water run-off.

Wroubel saw the trees in the back and the low area to the south. Did not see anything troublesome. We are talking about this one 30 acre parcel and the 4:1 ratio. Anything over the 10 acres is not susceptible to the 4:1 ratio rule. Do not understand why we are here and why the township made the decision they did. I see this as a taking of property without due process.

Garza notes that the only issue is the 4:1 ratio of the 30 acre parcel.

e. Correspondence received in response to the public notice that was published is included as Public Comment specific to this appeal and variance request.

Read into public comment:

1 – Denny & Jan Fox, opposed, referenced township law

2 – Bonnie Babcock – opposed, referenced following the ordinance and the condo development

3 – Jamie & Mindy Gallagher – opposed, referenced condo development and need to follow ordinances

- 4 – Mark Rickey – opposed, referenced condo development
- 5 – Deborah Gale –opposed, referenced condo development, township ordinance laws and rural character
- 6 – Albert Brown – opposed, referenced condo development, rural character and zoning
- 7 – John Boucher – opposed, referenced regulations and granting variances and setting precedence
- 8 – Jonothan – in favor, referenced state law, following ordinance and authorization of Board
- 9 – Lois MacLean – in favor, referenced following the ordinance, state law, single 30 acre parcel
- 10 – John King – opposed, referenced following the ordinance
- 11 – Robin Kettlewell – opposed, referenced condo development, follow ordinance
- 12 – Emilee Bruce – opposed, referenced condo development, high density housing, traffic and rural character
- 13 – Anonymous – opposed, referenced condo development, rural character and traffic

f. Public Speaking in Favor of Appeal:

Charles Manny - Open Meadow Lane TC, referenced Master Plan, rural character in general not specific, laws and restrictions, personal property and property rights.

Ted Hooper, 6575 Cook Rd., past Zoning Administrator, past Planning Commission member, past ZBA member, feels the Zoning Administrator made the right decision based on the ordinance, property rights, develop property properly.

g. Public Speaking in Opposition to Appeal:

Connie Hymore, Baggs Road, played March 2, 2022, Planning Commission meeting recording of ZA Hall, referenced local law and general ordinances.

Shawn Boyd, Baggs Road, referenced condo development and an old ordinance.

Corey Haskell, 6699 Baggs Road, referenced traffic concerns, development, ordinances and laws.

Frank Hymore, Baggs Road, passed out a written comment, referenced ordinance and laws, variance application, conflict of interest of the ZA, concern of attorney interpretation and its presentation to the ZBA

Vicki Beam, 6847 Baggs Road, referenced a conflict of interest of the ZA, shared a map, developer lawsuit, ordinances and laws, condo development, stated that it is unfortunate it is unbuildable and setting a precedence

Michelle Pescatello, referenced ordinance, condo development, rural character, quality of life, M72 corridor study and traffic concerns (over time limit)

Linda Slopsema, referenced the packet and the Hymore complaint, ordinance and laws, previous variances allowed by the ZBA were at the time of the application, financial burden is not a ZBA criteria and concern of setting a precedence

John King, Skegemog Point Road, continued Michelle Pescatello note: referenced the overlook view, rural character, condo development and wildlife

Cameron Boyd, Baggs Road, referenced condo development

Arnie Boyd, Baggs Road, referenced rural character, traffic concerns, condo development and wildlife and the need for new people on the township boards and committees

Connie Clark, Elk Lake Trail, indicated the owners' fight is with the realtor for misrepresentation

Kim Elliott, referenced property rights, ordinances and rules

Vern Gutknecht, Bunker Hill Road, referenced consequences of actions, facts and data, laws, constitution and ordinances

Eileen Cianciolo, 11670 Lossie Road, referenced ordinances, laws, rules, processes and condo development

John Freeman, Baggs Road, referenced ordinance and laws, board deemed property unbuildable, ZBA cannot address this request, rural character and development

Alex, 8555 Wheeler Pine, ordinance and laws

h. Anyone Wishing to Speak on the Appeal Who Has Not Already Commented:

Gary Buczkowski, Elk Lake Trail, rural character, division does not take away rural character. Should not be here for this. This is about the 30 acres not a development.

i. Close Public Hearing on Appeal #ZBA-2023-ZA at 9:11 p.m.

j. Discussion:

Bowen: Where in the ordinance does it mention the 10 acres?

Wroubel: The state indicates that the 4:1 ratio does not apply on acreage over 10 acres. We do not have anything in our ordinance that says it should be related over the 10 acres. There will be a lot of public input at the Planning Commission. Does the 4:1 rule apply to anything over the 10 acres?

Twp. Attorney Patterson: 4:1 ratio of 10+ acres is not specifically mentioned in the township ordinance. The language is vague in the ordinance. Address the standards. Statute and ordinance do not necessarily go well together. Address the standards and merits.

Michael Herring, Baggs Partners attorney: "may approve" is stated in the packet and in the ordinance.

Lake: Appreciate everyone here expressing interest. Mr. Hall has done a good job. Here to make a decision on a situation that has been blamed on Mr. Hall. To the Baggs Partner, who are the owners? (Derek and Gary Van Solkema indicate they are the owners.) Does not want to see traffic problems on M72. Thanked everyone for coming out tonight.

Bowen: Read through some of the standards for approval of land divisions.

Garza: This is not about condo use; this is about the one parcel. Condo development is of concern to the general public that is here. The township mission statement must be followed up with goals.

Bowen: It was within the ZA jurisdiction to allow the variance of the 4:1 ratio. Read through some of the standards of approval of the variance, zoning board handbook.

Wroubel: This case has nothing to do with the condo development. This is a single parcel. Does the ratio apply?

Lake noted that any development will have to be addressed by the PC, the Board or this Board in the future.

Wroubel: This is a variance request. The ZBA has issued many ratio variances in the past.

Bowen read through the request.

Lake noted that the township ordinance will have to be addressed.

k. Findings of Fact: The ZBA finds as follows based upon the Land Division Ordinance, the Application, information and comments received by the Applicant, its representative and the Township Attorney, and based on input (both through comments and written submissions) received during the public hearing. Facts as indicated in attorney information from the packet:

1. By majority vote on June 20, 2023 the Township Board directed the ZBA to accept all relevant information and hear the application for a Land Division Ordinance variance for the Parcel.

2. Pursuant to the Land Division Ordinance, Section VII and Section VIII and the action of the Township Board, the ZBA has been delegated and does have the authority to hear the request for a variance.

3. Applicant is the owner of 6631 Baggs Road, Williamsburg, Michigan, the subject of this appeal. The parcel is vacant with no structures on the property.

4. Previous owner, Morrison Acres, applied for the land division of a 125-acre parent parcel in 2020.

5. In 2020, the Zoning Administrator approved the application for a land division, and the division created the parcel at issue, which is approximately 30 acres in size.

6. On or about May 18, 2020, the parcel was sold to former owner Debono.

7. On or about January 14, 2022, the parcel was sold to Derek Van Solkema.

8. On or about February 2, 2022, the parcel was quit-claimed to Baggs Partners, LLC.

9. On August 29, 2022, the Township received a complaint alleging that the parcel was improperly split because it did not conform with the 4:1 width to depth ratio under Section VII of the Land Division

Ordinance.

10. At a special meeting of the Township Board on May 3, 2023, the Township Board made a number of findings, including that the parcel is noncompliant with the Land Division Ordinance, specifically the ratio requirement. The Township Board further found that the parcel is “not eligible for any building permits or zoning approvals such as special land use approval or site plan approval.”

11. The application followed, requesting a variance of the ratio requirement.

ZBA findings of fact standards discussed:

12. Whether the applicant has shown that exceptional or extraordinary circumstances exist such as exceptional topographical or physical conditions, the ZBA finds: No consensus, yes, no, yes, no.

OR

that the greater ratio would be reasonably compatible with the surrounding lands, the ZBA specifically finds: Consensus, yes.

13. Whether the applicant has shown that strict compliance with the regulations of this ordinance will unreasonably prevent the applicant from developing the property, the ZBA finds: Consensus - Yes.

14. Whether the applicant has shown that the requested variance will not cause an adverse impact on the development of surrounding property, property values, the ZBA finds: No consensus, yes, yes, no, yes.

15. Whether the applicant has shown that the health, safety and welfare will not be compromised, the ZBA specifically finds: no health, safety or welfare will be compromised.

We do not get to decide what they want to use the land for.

16. Whether the applicant has shown that the requested variance is the minimum variance necessary to permit reasonable use of the land, the ZBA specifically finds: Consensus – yes.

l. Conclusion: Bowen: Stuck on the topographical and the adverse effect of the surrounding area.
Garza: No to the variance.

m. Reasons for Conclusion: Based on the findings of facts as presented.

n. Decision: Grant the request.

o. MOTION by Bowen, second by Wroubel to grant the Appeal #ZBA-2023-ZA, application for a depth to width variance based on the stated findings of fact on record.

Roll call vote: Lake – yes; Garza – no; Wroubel – yes; Bowen – yes. Motion carried.

Signing of the Variance Decision Certification Forms.

Other Matters to be reviewed by the Zoning Board of Appeals

a. Correspondence Received – training opportunity in Harbor Springs October 3 & 4

Report of Planning Commission Representative, Wroubel: Master Plan survey got 600+ returned. There will be two workshops.

Report of Township Board Representative, Unassigned: Not available

Report of Zoning Administrator, Hall: A couple comments: ZA job is to administrate the ordinance. Procedures are very important. Question to the ZBA: the board made the parcel unbuildable, does this decision to grant the variance affect the board decision? Is there further action due by the board?
No answer to the questions.

Public Comment:

Frank Hymore noted errors and that the ZBA went against the ordinance.

Bowen noted the ZBA voted on a variance request.

Connie Hymore referenced the zoning ordinance book and the variance at the time of division. Believes there were improper procedures.

Gary Van Solkema, complimented the ZBA for doing their job, making the decision. Hall is very experienced.

Adjournment: 10:38 p.m.

Respectfully submitted,
Recording Secretary
Lois MacLean