

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING OF December 21, 2017
5777 Vinton Road, Williamsburg, Michigan

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

Roll Call: Bowen, Hooper, Lake, Shaffer (alternate)

Absent: Benak, Halstead, Garza (alternate)

Also in attendance: Clerk Goss and Zoning Administrator, Dennis Habedank, Randy and Jeanne Stites, Glenn and Renee Savage, and Bruce Williams

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Approval of Minutes:

Motion to approve meeting minutes of July 27, 2017, by Hooper, second by Bowen. On voice vote, all in favor.

Motion carried.

Scheduled Public Hearing: Called to order at 7:03

- A. Public Hearing on Appeal #17-00 A & B, Rose Marie Kerkhof, 6196 Cook Rd., Williamsburg, Michigan, property id 28-13-134-008-00, in the R-1 Residential District.
 - a. Open Public Hearing on Appeal #17-003 A & B, at 7:03 p.m. Requesting (A) a dimensional variance, a 70-foot variance from the 100-foot front yard setback leaving a 30-foot setback for the edge of the road right of way. Also, (B) a request for a use variance, Article 3, Fence, Residential Standards, requesting the use of an electric fence.
 - b. Zoning Administrator Presentation Dennis Habedank stated the packet was prepared by him for information he got from Mr. Stites. Mr. Stites is going to represent Rose Marie Kerkhof. The ordinance allows horses in R-1 under certain condition, under Article 37.20. Requires 2.5 acres, a 100-foot setback from property lines on all four property lines for the construction of permanent housing. Understand the horses came around April or May and have been there since that time without any permanent housing. In the summer, there was a makeshift tent. In October, a request was made for a variance to allow for the horses. It was discovered there was only 14 feet of area available to construct. It is narrow and long. Stites requested to put up a 20'x24' building. Being next to residential district to the east, it was thought that if the board grants his request, it would be better to put the building closer to the road than the subdivision. The project started late this year. The horses are without adequate shelter at this time and have been through rain storms, ice and wind. Issued a land use permit on November 21, for a storage building, but that has yet to appear. He has another plan. Hooper asked if there is room that he could comply with our setbacks. Bowen stated there is only 14 feet available.
 - c. Petitioner Presentation: Randy Stites stated back in April they brought the horses over. He stated he was corresponding with Mr. Weinzapfel (previous zoning administrator) through e-mail and with the supervisor trying to get all the details on the zoning ordinance. Do have a temporary shelter to keep them out of the rain and the wind. It is a tent-like structure. Got a 20'x24' metal building that sits on a cement foundation. It can be taken down and moved at any given time. The reason I started late was I had a gentleman that owed me about \$10,000. Finally got that money last week. That put me behind the 8-ball. He said he is open to questions. Bowen asked if he is planning on having any more horses. Stites stated no. There are two. One is 30 years old and the other belongs to the granddaughter. There are no plans for any additional. Bowen asked if the 20'x24' building is the minimum amount needed to provide shelter.

Stites stated that is the maximum. They are not going to farm it. It is just a shelter for the animals. Animal Control has been there a couple times.

Bowen asked if the shelter is a kit.

Stites said it is a Steelmaster building, not something he fabricated (provided a picture). They are going to close off both ends with wood and vinyl siding. It will have windows in the ends and doors. The building is where the horses will eat and sleep and get out of Mother Nature.

Hooper asked why Stites would buy a building before he found out where it would fit.

Stites stated he talked to Weinzapfel and Popp. Didn't realize there was a 100-foot setback for a horse barn. It's the mother-in-law's property. She is 90 years old and she watches the horses for entertainment.

- d. Report on Site visit: All members visited the site. Bowen stated he was out there, can see it's narrow and there is a slope to the property, slopes to the railroad grade to the south. There is residential to the east, four or five houses.

Lake stated he wonders about the east side, right up to the subdivision. Have we received any communications from those houses?

A man asked if he could chime in.

Bowen stated he noticed that it looks like it is fenced all the way around, an electric fence.

Lake asked if the electric fence goes down the east side.

Jeanne Stites stated it is all the way around the property.

Stites (Randy) stated they asked the neighbors and they do not care; they have put signs all around.

Jeanne said they have talked to the neighbor's children and told them they are not allowed to go inside the fence.

Shaffer asked if there are two lines of electric fence.

Stites stated that there are three lines but only the top two are energized.

Shaffer stated signs and talking to the neighbor kids are one of his concerns.

- e. Correspondence. Habedank stated he has not received any phone calls, written correspondence or emails.

- f. Public speaking in favor of appeal None.

- g. Public speaking in opposition of appeal: Bruce Williams, 6199 Elk View, stated he really has no obligations about the horses. Do have an objection about the manure and the smell. It is not picked up. The horses are walking in it all day long, every day. Plus, opened up Rose Marie's backyard, which is within 30 feet of mine, and that made it worse. There are piles of manure all over the place that do not get picked up. We live in the white house directly behind and that is our biggest concern. Glenn Savage, 9833 Pineneedle Lane, stated he lives to the back of the subdivision. For Renee and he, there would be no objections. His concern is the close neighbors' health, safety and welfare of the children. Would like to see the horses with a building. Have talked to people who own horses. They maintain 2.5 acres is fine with supplemental feed. They do need a building. I understand the neighbor with the smell. If that is the only concern, that may be something that could be dealt with. It does not bother me at all.

- h. Anyone wishing to speak on the appeal None.

- i. Close Public Hearing on Appeal #17-003 A & B at 7:22 p.m.

- j. Discussion of appeal:

Bowen said there are some good points, safety and welfare. He understands the things we have to look at as ZBA members. There is 3.5 acres on that piece of property. There is a significant smell, residential

is to the east from the typical prevailing winds.

Lake stated his concern is the smell and the electric fence on the east side. The horse will get into the building if it is big enough. Biggest thing he had is with the smell. It is going to be there anyway. Hooper stated, from the Planning Commission standpoint, they can comply. It would not be the building he bought, but that should not enter into the decision. It would be a long, narrow building and he could comply with the zoning. Ordinance says electric fences are not allowed in a residential area. He could put up a different fence. Hooper stated he does not see how we can defend this down the road if someone else wants to put in an electric fence.

Bowen stated one of the things we have to look at is if it is self-created. There has to be a hardship. Hooper stated he is looking down the road. "You did it for that guy; now you have to do it for me." Then we cannot defend what our ordinance says. If people do not like ordinance, they can come to the Planning Commission. The way it reads right now, he does not see how we can let that go. It is 100 feet from any property line. That is enough. Moving it farther to one side just opens up the door for someone else. He does not see why he (Stites) cannot do a long, narrow building. Feel bad for them that they purchased the building ahead of time. Others could attempt to claim the same.

Bowen stated you have to consider what the hardship is, if there is a special scenario that allows people to be able to ask for this, topography issues, trees, etc.

Shaffer stated he has a couple questions. Would it have to be readjusted to qualify to be agricultural? What is it going to do to the property values behind and to either side of the property?

Hooper stated that is a definite consideration. Having horses is allowed in the residential zoning, with the requirements that we have.

Lake asked what was the width of the building.

Stites stated it is 20'x24'. It would be 20' wide. He stated he cannot change the design of this building.

Bowen asked Habedank to come forward. If he did build within the ordinance, how big would it be?

Habedank stated there was a 14-foot-wide strip by 500 feet long that is buildable.

Bowen stated there is 6 foot that he could have it in that strip of land. He could ask for a variance of 6 feet.

Habedank stated the ZBA could grant a lesser variance than what he is asking for. It should also be considered that the property is over 2.5 acres it is 3.4 acres. Thirty-three feet is in the highway right-of-way. It is a smaller area for the horses to be in than you might find elsewhere.

Hooper stated (in general) it takes one acre of good quality land for a horse to live on, and that is at best marginal. Those horses overgraze that land over the course of the summer. Almost all of what they have to feed would be supplemental.

Bowen stated it is more along the lines of three acres.

Hooper said he does not know for sure. We do not have an accurate drawing of the fenced-in area.

Bowen stated if we deny, they still have the ability to make a 14-foot wide building.

Bowen asked the board if there is a hardship that was not created by the applicant.

Lake said he does not see anything.

- k. Findings of Fact: Bowen stated we have (approx.) 3.5 acres in residential with an electric fence on the land. We could build a building that is within the ordinance as is. Are there any other findings of fact? Hooper stated they already have the electric fence, which is illegal. The horses are already there, which he does not think Stites ever had to come to ask permission because he had a big enough property. He had to come and ask for the electric fence and where the building sits. The smell is something that if the neighbors wanted to complain about would get ahold of Department of Agriculture and they would come out and handle that.

- l. Conclusion: The land can be used as is that follows our ordinance as it is written.

- m. Reasons for Conclusion:

- n. Based on the findings of fact.
- o. Decision: Deny the variances.
- p. Motion by Bowen, second by Hooper to the deny the request. On voice vote, all those present voted in favor, none opposed. Motion carried.

Jeanne says there is no smell. They are not cows or pigs.

Bowen says the conclusion is not because of the smell it is that you can follow the ordinance.

Further comments by Randy and Jeanne Stites.

Jeanne asked if the fencing has to be all the way around or just on the east side.

Hooper stated you cannot have electric fence.

Jeanne asked what is going to prevent the kids from getting in there.

Lake said the electric could come down; put another one inside of the electric fence.

Bowen stated electric fences are illegal in the residential area.

Discussion followed.

Jeanne asked if there is zoning against a wall.

Hooper stated right now 6 feet is the highest you can go.

ZBA members offered suggestions as to how to comply with the ordinance.

Other Matters to be Reviewed by the Zoning Board of Appeals: None.

Planning Commission Representative report: Hooper stated the PC has had one of the most productive years they have had going through the ordinance. Have had at least four, if not more, public hearings on changes in the ordinance. Think we are going to send it out for recodification so the ordinance is up to date and legal. They have another public hearing right after the first of the year. They are not doing wholesale changes. They are trying to make it so that anybody can come in here and look at the ordinance and it can be understood.

Township Board Representative report: N/A

Zoning Administrator report: Habedank stated tonight is a pretty good example of horses, in general, on 2.5 acres. He wonders if it means 2.5 acres for the horses, or is your lot 2.5 acres. You have property that is not part of where the horses are. It is important that we revisit that. When you subtract off the 100 feet on all sides, it makes it much smaller. If we are going to allow in residential district, it needs to be increased to at least a 5-acre minimum. Hooper stated that he will bring it up at the Planning Commission. In some places, the residential area goes back 1000 feet from the lake. It creates an issue. He stated he thinks 2.5 acres is very marginal.

Bowen stated it might not hurt to pull in somebody who raises horses, who is a farmer and understands it all.

Certain places in the township have very good soil and opportunity for animals, and others are very poor. He stated he has beautiful loam soil but if you go into the pines (to the south), it is sandy, it is marginal for growing much of anything except pine trees.

Habedank says we need to address quality of the land to support that animal.

General discussion of the zoning ordinance followed.

Habedank stated it has been busy in zoning, making progress on junk complaints. He does not see anything on the January agenda, other than it is a mandatory meeting. He stated he has some training materials for the members and alternates.

General discussion followed.

Habedank noted that Animal control was there (more than once). On the second, there was a confrontation that required the sheriff to go out there. Her purpose was to let the applicant know that she had room and was offering her stall to board the horses. There was a big blowup and confrontation. There are places for them to go. You can get them out of the field until you get your building up and taken care of.

Next meeting will be January 25, 2018, a mandatory meeting to go over By-laws, meeting schedule for 2018/2019 and election of officers.

Adjourned at 8:09 p.m.

Respectfully submitted by
Recording Secretary
Lois MacLean