

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS REGULAR MEETING MINUTES *APPROVED*
5151 MARSH ROAD, OKEMOS, MI 48864-1198
(517) 853-4000
WEDNESDAY, AUGUST 26, 2020 6:30 PM
TOWN HALL ROOM**

PRESENT: Chair Mansour, Members Field-Foster, Kulhanek, Wisinski, Brian Shorkey
(Alternate)

ABSENT: Member Hendrickson

STAFF: Director of Community Planning and Development Mark Kieselbach, Assistant
Planner Keith Chapman

1. CALL MEETING TO ORDER

Chair Mansour called the meeting to order at 6:31 p.m.

2. APPROVAL OF AGENDA

MEMBER SHORKEY MOVED TO APPROVE THE AGENDA AS SUBMITTED.

SECONDED BY MEMBER WISINSKI.

VOICE VOTE: Motion carried unanimously.

3. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES

A. January 8, 2020 Meeting Minutes

B. June 10, 2020 Meeting Minutes

MEMBER FIELD-FOSTER MOVED TO APPROVE THE MINUTES FROM WEDNESDAY, JANUARY 8,
2020 AS SUBMITTED.

SECONDED BY MEMBER WISINSKI.

VOICE VOTE: Motion carried unanimously.

MEMBER WISINSKI MOVED TO APPROVE THE MINUTES FROM WEDNESDAY, JUNE 10, 2020 AS
SUBMITTED.

SECONDED BY MEMBER KULHANEK.

VOICE VOTE: Motion carried unanimously.

4. COMMUNICATIONS

A. Mike & Jackie Christie, RE: ZBA #20-08-26-1, in opposition

B. Curtis J. Armbruster, RE: ZBA #20-08-26-1, in opposition

5. UNFINISHED BUSINESS

None

6. NEW BUSINESS**A. ZBA CASE NO. 20-08-26-1 (Jerry Fedewa Homes) 5570 Okemos Road, East Lansing, MI 48823**

LOCATION: East Lake Drive (Vacant Parcel)

PARCEL ID: 02-101-004

ZONING DISTRICT: RA (Single Family-Medium Density)

The applicant is requesting variances from the following sections of the Code of Ordinances:

- Section 86-471(b)(1), all structures and grading activities shall be setback from the edge of a water feature as follows: Wetlands regulated by the Township, the state, or by federal law equal to or greater than two acres in area; 40 feet.
- Section 86-471(c)(1), to minimize erosion, stabilize streambanks and wetland edges, protect water quality, and preserve fish and wildlife habitat, a natural vegetation strip shall be maintained from the edge of a water feature as follows: Wetlands regulated by the Township, the state, or by federal law; 20 feet.

The applicant is requesting an 18' variance to construct the single family house within the 20 foot natural vegetation strip and a 38' variance to construct the single family house within the 40 foot wetland setback.

Assistant Planner Chapman outlined the case for discussion. If approved, the staff recommended of the following conditions:

- The applicant shall obtain a soil erosion and sedimentation control (SESC) permit from the Meridian Township Department of Public Works and Engineering, as applicable.
- The applicant shall stake the edge (limit) of grading, corners of the house, deck and driveway on the parcel before any excavation or construction begins.
- The applicant shall install erosion control silt fencing along the boundary of the wetland before construction of the house and driveway to prevent erosion into the regulated wetland. The silt fencing shall remain for the duration of the house and driveway construction.
- The single family house, driveway, and grading are limited to the dimensions and locations as presented to the Zoning Board of Appeals on the site plan prepared by Jerry Fedewa Homes Inc. dated August 4, 2020 and received by the Township on August 26, 2020.

Chair Mansour asked the applicant or the applicant's representative if they would like to address the Zoning Board of Appeals (ZBA).

Gerald Fedewa, 5570 Okemos Road, East Lansing, stated the parcel is 13 acres and there is only 0.25 acre that is buildable. They are proposing a first floor footprint of 1,200 square feet. The two foot encroachment into the wetland setback is where the driveway meets Lake Drive. The house has been angled and the driveway has been turned to run perpendicular with the road. The house is out of the 20 foot setback except for the one corner where they will hand grade. Silt fence will be installed and any disturbed area will be replanted. If the variance request is approved and they are able to purchase the parcel, they plan on donating a portion of the land to Lake Lansing Park North or the Township Land Preservation Program.

Chair Mansour opened the floor for public remarks.

Brock Fletcher, 11091 Jerison Drive, Grand Ledge, MI, stated he is the listing agent for the parcel. The parcel owner, Rob Pozel, purchased the parcel over 50 years ago with the intention to build a house. He had presumed it was a buildable parcel and has been paying property taxes. The Township has been assessing the parcel as buildable.

Chair Mansour closed public remarks.

Board Member Wisinski asked if there was any historical data to support the current owner's assumption the parcel was buildable considering the wetlands and hydric soils.

Assistant Planner Chapman replied the Township does not do an assessment if the parcel is buildable. For wetlands, the owner would need to request a delineation. Wetland boundaries change over time.

Board Member Wisinski asked if there was a geo-technical survey to verify if the soils are suitable for building on.

Mr. Fedewa stated soil testing had been performed and the soil was adequate on the site to accommodate the proposed house.

Board Member Wisinski asked if EGLE's (The Michigan Department of Environment, Great Lakes and Energy) or DEQ (Department of Environmental Quality) 20 foot setback and if the Township's 40 foot setback were in place at the time of purchase.

Director Kieselbach replied EGLE does not have a setback requirement. The wetland setback is a Township requirement. The Wetland Ordinance was adopted in 1991 and the setback requirement was added to the Zoning Ordinance in 1994 to protect the wetlands and create a buffer. If a wetland is two acres or more in area, there is a 40 foot setback and if the wetland is less than two acres in area, there is a 20 foot setback.

Member Field-Foster asked if there had been discussions with EAGLE regarding a wetland permit to build on this parcel.

Mr. Fedewa replied they assumed since the house was out the wetland, they did not need a permit from EGLE.

Member Field-Foster asked if there have been discussions with the Ingham County Drain Commissioner and Township about the permitting process.

Mr. Fedewa replied they had spoken with the Township Engineer that handles the soil erosion permits. He did not believe a permit was necessary from the Drain Commissioner's Office. The site will need water, sewer and building permits through the Township and a driveway permit from the Ingham County Road Department.

Member Field-Foster asked if the owner would be allowed an exception to build on the parcel since the parcel was purchased 50 years ago and an ordinance was not in place at that time.

Director Kieselbach replied the zoning of the parcel has not changed. The current zoning classification was created in 1960 and the parcel has remained in the single family category since that time. The proposal covers a small upland area of approximately 0.25 acre outside the wetland. Unless there is an impact to the wetland, then permits from EGLE and the Township would be required. In this case, the variance request is for setbacks from the wetland.

Member Kulhanek asked if there is a way to position the house on the property without encroaching into the wetland setback.

Mr. Fedewa stated if the house was turned to be 10 feet from the property line on the west side and 85 feet from the center of the road right-of-way, it would reduce the width of the house to 18 feet. The driveway was adjusted to be perpendicular to the road. They had tried to minimize the impact to the vegetation and wetland setbacks with the placement of the house.

Member Kulhanek asked why the grading was necessary and could the grading be limited.

Mr. Fedewa replied they wanted to create a small yard for the house but could possibly limit the grading.

Member Wisinski asked staff to confirm how the grading would affect the 20 foot and 40 foot setbacks.

Director Kieselbach replied the grading in the 20 foot setback is for the construction of the house. Within the 20 foot setback closest to the house the area is allowed to be used as yard but cannot have a structure placed in the setback. The other area disturb would be for the driveway.

Mr. Fedewa stated when the excavation for the basement was completed, the site would be graded to have the water flow away from the house. After construction, the closest 20 feet to the house would be restored to lawn and the second 20 feet would be restored to natural vegetation. If necessary, the grading could be minimized and the extra soil taken off site.

Chair Mansour asked what was the purpose for the wetland setback.

Director Kieselbach replied the first 20 feet closest to the wetland is referred to as a natural vegetation strip and serves to protect and buffer the wetland. The storm water from the site will be filtered through the vegetation strip before going into the wetland. The second 20 feet closest to the house allows for a lawn which also filter the water.

Chair Mansour asked how the Township will address the soil erosion control measures since this parcel is 500 feet from Lake Lansing.

Director Kieselbach replied soil erosion fencing will be placed at the wetland boundary to identify the location of the wetland and to stop soil and other debris from going into wetland. Once the plant material is restored and growing, the soil erosion fence can be removed.

Chair Mansour asked how the Township protected the wetland setback areas when encroached into during construction.

Director Kieselbach replied the Engineering Department will issue the soil erosion permit, and monitor the area during construction. The soil erosion permit will not be released until plant material (grass, natural vegetation, etc.) is established and growing.

Mr. Fedewa stated if the grass and plant materials are not established when he applies for the certificate of occupancy, he would have to escrow funds to insure the growth of those plant materials.

Member Shorkey stated the circumstances were unique to the property because of the road, side yard and wetland setbacks. The circumstances were not self-created and there are difficulties to construct a house on this parcel. The parcel is zoned residential and could not be used without the variances. The variances are the minimum so a house could be built. As a single family house is not out of character for the area. He did not agree with the comments the house was out of character for the area. The wetland would remain the same and not affect Lake Lansing. The granting of the variances will not set a precedent or be a recurrent problem.

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. She stated Member Shorkey had outlined the unique circumstances of this parcel.

Chair Mansour read review criteria two which states these special circumstances are not self-created. She stated the circumstance were not self-created by the owner but by the natural environment.

Chair Mansour read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties.

Member Field-Foster stated the parcel had been zoned in the single family residential district since the 1960s and rendering it now useless is a practical difficulty.

Chair Mansour stated the question is can a house be built on this parcel based on the current restrictions.

Member Shorkey stated due to the setbacks, a house could not be constructed on the parcel without variances.

Member Wisinski stated the house could be reduced in size.

Chair Mansour read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose. Chair Mansour stated the parcel is zoned residential and to build a house, certain variances are going to be required.

Chair Mansour reviewed criteria five which states granting the variance is the minimum action that will make possible the use of the land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance,

secure public safety, and provide substantial justice. Chair Mansour stated the minimum action would be the size of the house and if the grading was necessary for the house.

Member Field-Foster asked if the footprint of the house could be reduced to reach the minimum action.

Mr. Fedewa stated a variance would still be needed to construct the driveway because it goes thorough the wetland setback and is within two feet of the wetland. They could minimize the grading, take the soil off site, stay within 15 feet of the house and do some hand grading.

Member Wisinski stated there was a practical difficulty with the driveway and appreciated the applicant reducing the grading. However, she wanted to keep the natural vegetation within the 20 foot setback as well as the 40 foot setback as much as possible.

Chair Mansour asked if the concerns were with post-construction.

Member Wisinski replied she was concerned with the long term affects on water quality, the eco-system, the wetland and Lake Lansing.

Member Kulhanek stated the applicant was limited on where the house could be built on the parcel. The applicant is willing to limit grading within 15 feet of the house.

Member Field-Foster stated in order to have a buildable area, variances were needed.

Member Wisinski asked if a condition was added for grading within 15 feet of the house, would Mr. Fedewa still be willing to donate land to the Land Preservation Program and could it be made a condition.

Mr. Fedewa replied he was willing to agree to the condition regarding the proposed land donation, if the variances were approved.

Member Wisinski asked if there would be any adverse effects if pursuing the land donation as a condition.

Director Kieselbach replied he was concerned with attaching the land donation as a condition for approval of the variances. The ZBA could recognize the offer but it should not be a condition of approval.

Mr. Fedewa stated they could only make the donation if they own the parcel. The parcel would not be purchased if it could not be built on. They would be willing to give a letter of intent as a condition of ownership.

Member Field-Foster stated she appreciates the offer but the offer should not be considered as part of the variance request. Only the review criteria should be considered regarding the variances for this parcel.

Chair Mansour also appreciated the offer but the donation could not be considered during deliberation.

Chair Mansour read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. Chair Mansour stated the request would have minimal affect on the adjacent land, other properties, wetlands and Lake Lansing. The applicant is limiting the amount of grading and maintaining wetland vegetation.

Chair Mansour read review criteria seven which states the conditions pertaining to the land or structure are not as general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. Chair Mansour stated this case was unique due to the wetland and being adjacent to Lake Lansing.

Chair Mansour read review criteria eight which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter. Chair Mansour stated this criteria had been met.

Member Field-Foster stated she was uncomfortable regarding the discussion on the land donation and appearance of quid pro quo.

Mr. Fedewa stated he would withdraw the land donation offer.

Chair Mansour stated the land donation offer was not part of the review criteria.

MEMBER SHORKEY MOVED TO APPROVE THE REQUEST FOR THE VARIANCES WITH THE CONDITIONS AS PROPOSED BY STAFF EXCEPT ADDING 15 FEET GRADING AROUND THE BUILDING.

Chair Mansour asked for Member Shorkey to clarify his motion.

MEMBER SHORKEY MOVED TO APPROVE THE VARIANCE REQUEST WITH THE CONDITIONS AS RECOMMENDED BY STAFF AND WITH THE ADDITIONAL CONDITION THAT THE GRADING BE LIMITED TO 15 FEET AROUND THE BUILDING.

Assistant Planner Chapman suggested the motion be amended to include no grading within the 20 foot natural vegetation strip.

Member Shorkey offered instead of 15 feet from the house, grading to be kept out of the 20 foot wetland setback in the front yard of the house.

Chair Mansour asked if the grading for the driveway could be moved outside of the 20 foot natural vegetation strip.

Mr. Fedewa replied for the driveway the top soil would be scraped away and gravel installed and then pavement. Some grading would need to occur in the natural vegetation strip. They would be willing to limit grading within 15 feet of the house and hand grade within 2.5 feet of the closet point of the house and build the driveway outside of the wetland.

Chair Mansour stated she would be willing to accept a friendly amendment for hand grading at the corner of the house at 2.5 feet.

Member Wisinski asked if the area could be restored with natural vegetation within the 20 foot natural vegetation strip and grass/lawn within the 40 foot wetland setback.

Mr. Fedewa stated he would restore the area.

Chair Mansour suggested adding restoring the natural vegetation strip within the 20 foot setback after construction is completed and prior to certificate of occupancy.

Member Wisinski proposed: "grading not to exceed 15 feet from the house and not to extend into the 20 foot setback with the exception of the southeast corner which would be hand graded"

Director Kieselbach suggested a condition could be to grant the variances for the grading as shown on the plan. A condition added for hand grading at the 2.5 feet at the corner of the house. A condition added that when the project is completed, the natural vegetation strip in the 20 foot setback be restored prior to Certificate of Occupancy being granted for the house.

MEMBER SHORKEY AMENDED THE MOTION TO STATE APPROVAL OF THE VARIANCE REQUEST WITH THE CONDITIONS AS PROPOSED BY STAFF WITH THE CONDITION OF HAND GRADING AT THE SOUTHEAST CORNER OF THE HOUSE AND THE NATURAL VEGETATION WITHIN THE 20 FOOT BUFFER IN THE FRONT SETBACK OF THE HOUSE BE INSTALLED PRIOR TO OCCUPANCY WITH THE EXCEPTION OF THE DRIVEWAY.

SECONDED BY MEMBER WISINSKI.

ROLE CALL TO VOTE:

YEAS: Members Shorkey, Wisinski, Kulhanek, Chair Mansour

NAYS: None

ABSTAINED: Member Field-Foster

Motion carried: 4-0-1

7. OTHER BUSINESS

None

8. PUBLIC REMARKS

Chair Mansour opened the floor for public remarks and seeing none closed public remarks.

9. BOARD MEMBER COMMENTS

Chair Mansour welcomed Member Shorkey and expressed her appreciation for the integrity of the decision process and Member Field-Foster in making sure the Board stayed within the review criteria.

Member Field-Foster thanked the Chair and stated it was a good meeting.

10. ADJOURNMENT

Meeting adjourned at 8:23 pm.

Respectfully Submitted.

Robin Faust, Administrative Assistant II