

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS MEETING MINUTES ***DRAFT***
5151 MARSH ROAD, OKEMOS MI 48864-1198
517.853.4000
WEDNESDAY, May 10, 2017**

PRESENT: Members Jackson, Ohlrogge, Lane, Stivers, Chair Beauchine
ABSENT: None
STAFF Keith Chapman, Assistant Planner
Peter Menser, Senior Planner

A. CALL MEETING TO ORDER

Chair Beauchine called the meeting to order at 6:30 p.m.

B. APPROVAL OF AGENDA

MEMBER OHLROGGE MOVED TO APPROVE THE AGENDA AS WRITTEN.

SECONDED BY MEMBER JACKSON.

VOICE VOTE: Motion carried unanimously.

C. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES

Wednesday, April, 26 2017

MEMBER JACKSON MOVED TO APPROVE THE MINUTES OF WEDNESDAY APRIL 26, 2017 AS WRITTEN.

SECONDED BY MEMBER OHLROGGE.

VOICE VOTE: Motion carried unanimously.

D. COMMUNICATIONS

None.

E. UNFINISHED BUSINESS

None.

F. NEW BUSINESS

Chair Beauchine opened the meeting by stating there is no conflict of interest for any Zoning Board of Appeals (ZBA) members who may currently be a customer of Verizon Wireless.

Member Stivers questioned the conflict of interest as she is a customer of Verizon Wireless and wondered if wouldn't she benefit from the tower being built and receiving better service.

Member Lane replied he is a Verizon Wireless customer also, however, none of the ZBA would benefit any greater than any other Verizon Wireless customer in Meridian Township or the Greater Lansing Area.

1. ZBA CASE NO. 17-05-10-1 (VERIZON WIRELESS), P.O. BOX 21485, DETRIOT, MI 48221

DESCRIPTION: 4888 Dawn Avenue
TAX PARCEL: 20-204-005
ZONING DISTRICT: I (Industrial), Wireless Communication Facility Overlay

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

- Section 86-435(f)(1), which states the minimum lot area is one acre.
- Section 86-435(f)(2), which states the minimum lot is 100 feet.
- Section 86-438(f)(1)(c), which states at wireless communications facilities with a freestanding wireless communications support structure, a minimum of two off-street parking spaces shall be provided on the site. An additional off-street parking space for each two employees required as on-site personnel shall be provided at the facilities.
- Section 86-438(f)(3)(c)(2), when a monopole, self-supporting lattice tower, or guyed tower is used as the wireless communications support structure, it shall be set back from all property lines a distance equal to the height of the monopole, self-supporting lattice tower, or guyed tower or the minimum setback required by the zoning district, whichever is greater.

The applicant is requesting to construct a 90 foot tall wireless communication tower.

Assistant Planner Keith Chapman outlined the case for discussion. He added the setback dimension of 86.7 feet in the packet is incorrect, as it didn't take into consideration the new parcel being created with the land division. Setbacks would be 15 feet side yard, 25 feet front yard, and 35 feet rear yard, which is a variance of 75 feet, 65 feet, and 55 feet.

Chair Beauchine commented on the one year lease component to ensure the ZBA understood how it works. He suggested the first item the board should consider is whether or not the land division and the lease component should have a variance. If those items are not approved, then the remaining requests are not approved, however, if approved then the ZBA can address the dimensional requests.

Leland Calloway of Domain Consulting, representative for the applicant addressed the reasons for not providing parking spaces noting the site is in a remote location, has only a gravel access road, and the location will be unmanned. He also addressed a safety concern over the 90 foot tall tower and explained how the tower is engineered.

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

Chair Beauchine suggested the ZBA consider anything over a one year lease as a land division based on the counsel of the township attorney. He also noted the tower would be the only one in an Industrial District.

Member Jackson stated since a variance goes with the property would the Zoning Board of Appeals (ZBA) be creating a nonconforming lot and variances associated with it.

Mr. Chapman stated the variances would be permanent.

Member Jackson questioned if it would be created as a legal nonconforming lot.

Mr. Chapman replied yes.

Member Stivers questioned if the previous variances from the 1970's would apply to the new parcel created.

Mr. Chapman replied it is a different lot and a new lot is being created.

Member Jackson added we are creating two lots.

Chair Beauchine also added the ZBA is not approving a use variance and once the lease has ended the property would return to its original state and lot description.

Mr. Chapman replied at the end of the lease the property owner could come back to the Township to merge the two lots into one again.

Member Ohlrogge questioned if the cell tower is removed in the future, would the subject property remain as two separate lots.

Member Lane replied the owner could make a boundary line adjustment and make it one lot again, which would undo the land division.

Member Ohlrogge asked if the owner changes the boundary lines after the lease expires, would the variances no longer be valid.

Chair Beauchine replied yes, and the legal lot of record would be changed.

Member Stivers asked for clarification on the Township lawyer's decision on land divisions.

Chair Beauchine replied in the past a decision was made for a property with a one year lease or more to be a land division to accommodate the leased area.

Member Stivers asked if there was any way around that decision.

Chair Beauchine replied it was decided this is the best practice for the Township by legal counsel.

Chair Beauchine read review criteria one, 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. He stated the property is uniquely located on a dead-end road, which backs up to rail-road tracks, and the current lot is not conforming. Also, the boundaries of the zoning district are impractical for this situation.

Chair Beauchine addressed the two parking spaces by stating the ZBA cannot grant a variance not to have paved parking, which is considered a use variance. The ZBA can only give a dimensional variance.

Member Jackson replied the ZBA could make a case for no parking spaces based on the limited use of the site, low traffic area, and a small lot size, which creates a unique case for not requiring parking spaces.

Chair Beauchine read review criteria two, which states these special circumstances are not self-created. He stated it is not a self-created circumstance by splitting the lot into two lots.

Chair Beauchine read review criteria three, which reads strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. He replied practical difficulties are created based on the size of the lot, which would require a variance whether the lot remained the same size or is divided.

Member Stivers wondered how the ZBA would evaluate the applicant's statement in the packet referencing there no other available properties in this particular service area. She asked if it would be a unique circumstance.

Member Jackson replied the statement is not necessarily true, as there are many other locations within the township for a cell tower, however as Chair Beauchine noted, it would be the only one located in an Industrial District in the vicinity where the applicant wants it, which gives uniqueness in that regard.

Member Stivers questioned why the tower needs to be in an Industrial District.

Chair Beauchine replied it does not; however having a cell tower in the Industrial District is a better location than having a cell tower in a residential area. He added the subject property is surrounded by rail-road tracks making it less accessible to traffic.

Member Stivers agreed stating those factors do make a unique situation.

Member Jackson added the structure of the tower is also unique based on other structures in Meridian Township.

Chair Beauchine read review criteria four, which states 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 or would render conformity with such restrictions unnecessarily burdensome. He stated this is an accurate statement.

Chair Beauchine read review 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. He agreed it was the minimum action necessary, and the subject property location is not intrusive.

Member Stivers asked about the setback requires which are in place and wondered if they are in place to deal with a fall factor.

Member Jackson replied yes.

Member Stivers wondered if there was a chance the tower could fall on the rail-road track.

Member Lane replied that same question was raised at the Planning Commission and he asked Mr. Calloway to respond to Member Stivers question.

Mr. Calloway stated the fall zone requirements are one of the most outdated requirements in all ordinances state-wide, which goes back to a time when guyed towers were constructed. The Verizon Wireless tower is a self-supporting tower which is strapped to a concrete foundation. He added depending on the soil type it can be placed 20 – 30 feet deep into the ground. He commented the towers are designed with a weak point in them and in the case of a catastrophic event the tower will self-collapse.

Chair Beauchine acknowledge Richard Rassel, attorney for Verizon, 380 North Old Woodward, Birmingham, MI, and asked if he had anything to say.

Mr. Rassel declined as the statement he would have made has been addressed by the ZBA.

Chair Beauchine 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.

Member Lane replied based on the description and design of the tower given the tower would not adversely affect adjacent land and stated this criterion has been met.

Chair Beauchine read review criteria seven, which states the conditions pertaining to the land or structure are not so general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable.

Member Ohlrogge wondered what the cell tower ordinances are pertaining to the size of a parcel of land.

Mr. Chapman stated there is no stipulation for land size. It depends on the underlying zoning district with its specific requirements.

Member Ohlrogge indicated a reluctance to grant the variance for a land division on a nonconforming piece of property due to the small size of the lot and the required setbacks to construct a cell tower on the site.

Chair Beauchine suggested the ZBA move forward and read criteria eight, and then discuss the request further.

Chair Beauchine read review criteria eight, which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter. Noting he agreed with this statement.

Chair Beauchine replied the Industrial Zoning District is an appropriate location for a cell tower. He added between township staff and the attorney it has been determined this case is appropriate for the ZBA to consider. However, to have any variance on the subject property the ZBA needs to approve the land division.

Member Stivers stated the cell tower at the site is a good idea. The land division seems unreasonable. She then asked if the ZBA said no to the land division, would the applicant need to set up another lease or would the ZBA be saying no to the tower also.

Chair Beauchine replied that on the current site a variance would be needed no matter what is being constructed as the lot is a nonconforming lot.

Member Stivers added then it would be a minimal variance request if the lot remained whole and not split.

Member Ohlrogge inquired what else was on the parcel of land.

Mr. Chapman replied there is a commercial storage building on the lot, however the use of the building is not known.

Chair Beauchine requested staff to guide the ZBA on the Land Division issue.

Mr. Chapman stated our legal counsel has recommended the land division, and to do the land division, it must meet the width and area requirements of the zoning ordinance

Member Lane replied at the Planning Commission when dealing with cell towers with a one year lease or longer it creates a perpetual easement, so the Township steered the applicant towards this process, which has created the need for a land division.

MEMBER LANE MOVED TO APPROVE THE REQUEST FROM SECTION 86-435(F)(1) AND SECTION 86-435(F)(2), AS WRITTEN.

MEMBER JACKSON SECONDED.

Member Stivers stated there should be a better way instead of dividing the land. She added how unique the Industrial Zoning District is and how important it is for the ordinances to be enforced.

Member Jackson suggested due to the unique elements of the land and the structure the process allows the ZBA to make this subject site productive. She questioned how the ZBA would proceed with not requiring parking spaces.

Member Lane commented we are dealing with the first component of lot size and lot width only.

Member Stivers questioned what will happen to the remaining lot area if the land division is granted.

Member Jackson replied the parcel left is up to the property owner to determine what he will do with it, and that does not propose a problem for the township.

Member Stivers stated her concern is with the variances and the two nonconforming parcels.

Member Jackson stated it has already been established the property owner can come back in after the lease has expired and merge the two lots back into one single nonconforming lot.

Member Ohlrogge questioned the owner's options when the lease expires and chooses not to renew the lease.

Mr. Menser replied what happens are the two lots will be combined, and it is simply filling out a form found in the Assessing Department.

Chair Beauchine asked Mr. Calloway if he had any questions.

Mr. Calloway asked Mr. Menser what the future limitations would be for the landlord with a lot split as far as development, and if an easement option is chosen over a lease option or a perpetual lease option.

Mr. Menser stated there are limitations which exist and the Township Attorney has determined the land division is the way this case needs to be dealt with. The ZBA should not consider ways to get around it, but address the situation as it is.

Member Stivers replied she wants the easement and not grant the variance. She wondered if the ZBA denied the request could the applicant come back for an easement.

Chair Beauchine replied the ZBA members are not legal experts and the Township Attorney has stated this is the way this must be done and he is protecting the interest of the Township.

Member Stivers asked if the lawyer decided this is the process due to some technical problems or is the land division is the simplest way to go. She requests more concrete reasons for this process over an easement.

Mr. Menser replied these are the past practices for the last ten years since he has been here. It is also the same advice from other attorneys.

Member Lane replied he believes it is tied to the Land Division Act a state statute which dictates leases on a property with a year lease or more. The lease should be treated as if owner occupied, and which requires a land division.

Mr. Menser stated Member Lane's comments are correct. Since the attorney's advice is it could be a land division, and to approve a land division, the parcel has to meet the minimum lot area and lot width requirements or receive variances.

Member Stivers replied the information shared how multiple lawyers and firms have come to the same conclusion is valuable to her. She questioned if it was the case for this subject property.

Mr. Menser stated this is the practice that has been used consistently for the last 20 years.

ROLL CALL VOTE: YES: Members Stivers, Jackson, Lane, Ohlrogge and Chair Beauchine.

NO: None.

Motion carried unanimously.

Chair Beauchine moved on to the other variance requests from Section 86-438(f)(1)(c), and Section 86-438(f)(3)(c)(2). He then stated not having parking space at this site is not an issue as parking already exists at the site.

Member Jackson commented the reason for a parking space is based on the assumption the tower sit may need servicing, which requires parking a vehicle. The parking space assures traffic will not be blocked. In the case of the subject property, it appears the easement would provide parking space.

Member Lane added the property is gravel, which makes it unique. Along with being an impervious surface, it allows for parking which other surfaces such as dirt and grass would not allow.

Member Stivers questioned the safety of the surface in the winter, and she wanted to make sure the workers have access to the site. She also questioned the reason why parking spaces are required to be paved.

Chair Beauchine stated parking spaces need to be paved as the ordinance requires it.

MEMBER JACKSON MOVED TO GRANT THE VARIANCE FROM Section 86-438(f)(1)(c).

MEMBER OHLROGGE SECONDED

ROLL CALL VOTE: YES: Members Stivers, Jackson, Lane, Ohlrogge and Chair Beauchine.

NO: None.

Motion carried unanimously.

Member Ohlrogge requested Mr. Chapman to review the dimensional setbacks again.

Mr. Chapman stated the setbacks for the side yard are 15 feet on the north and south side, which is a 75 foot variance. The front yard setback is 25 feet, which is a 65 foot variance. The rear yard is 35 feet, which is a 55 foot variance.

Member Stivers stated these are huge variances and originally this is what she was uncomfortable with. However, since the ZBA has moved forward the explanation on the construction of tower has satisfied her concerns and the potential for damage or hurting anyone is very low.

MEMBER STIVERS MOVED TO APPROVE THE VARIANCE FROM SECTION 86-438(f)(3)(c)(2).

MEMBER JACKSON SECONDED.

ROLL CALL VOTE: YES: Members Stivers, Jackson, Lane, Ohlrogge and Chair Beauchine.

NO: None.

Motion carried unanimously.

G. OTHER BUSINESS

H. PUBLIC REMARKS

Opened and closed public remarks

I. BOARD MEMBER COMMENTS

Chair Beauchine commented the Spring Farmers' Market is open every Saturday, May 6th through June 24th in the Central Park Pavilion.

J. ADJOURNMENT

Chair Beauchine adjourned the meeting at 8:00 p.m.

K. POST SCRIPT – Member Lane

Respectfully Submitted,

Rebekah Lemley
Recording Secretary