

EATON COUNTY BOARD OF APPEALS MINUTES
February 4, 2020

Call to Order: Ms. Claudine Williams, Director of the Community Development Department, called the meeting to order at 6:00 p.m. in the Board of Commissioners Room at the Eaton County Courthouse, 1045 Independence Blvd, Charlotte, Michigan.

Pledge of Flag: The Pledge of Allegiance was given by all.

Roll Call: Nikki Chmielewski, Donald Chase, Charamy Cleary, April Stopczynski, and Tim Cattron

Staff Present: Claudine Williams and Brandy Hatt

Nominations and elections of Board Chairperson, Vice Chairperson and Secretary.

Ms. Williams asked for nominations for Chairperson. **Member Chase** nominated Member Chmielewski. **Member Cleary** seconded. **Member Cattron** moved nominations be closed and a unanimous ballot cast for Member Chmielewski. **Member Cleary** seconded. Motion carried.

Member Chmielewski assumed the responsibility of presiding over the meeting.

Member Chmielewski asked for nominations for Vice Chair. **Member Cleary** nominated Member Chase. **Member Stopczynski** seconded. **Member Cattron** moved nominations be closed and a unanimous ballot cast for Member Chase. **Member Cleary** seconded. All in favor. Motion carried.

Member Chmielewski asked for nominations for Secretary. **Member Cleary** nominated Member Stopczynski. **Member Cattron** seconded. **Member Cleary** moved nominations be closed and a unanimous ballot be cast for Member Stopczynski. **Member Cattron** supported. Motion carried.

Member Cleary moved to close elections. **Member Cattron** supported. Motion carried

A motion was made by **Member Cleary** to approve the agenda for the February 4, 2020 meeting. **Member Cattron** supported. Motion carried.

A motion was made by **Member Cattron** to approve the minutes from the December 3, 2019 meeting. **Member Chase** supported. Motion carried.

Communications: None

Public Comment: Mr. Ted Stroud, stated he is an attorney representing Ball Septic. He stated he submitted two letters that address an agenda item for this evenings meeting. Mr. Stroud stated one of the letters is requesting the recusal of Member April Stopczynski for Mr. Haley's request. Mr. Stroud stated at the December 3, 2019 Planning Commission Meeting a decision was made regarding his clients business; Member Stopczynski addressed the Planning Commission regarding the business. He stated Member Stopczynski's comments are recorded in the meeting minutes which are attached to his letter. Mr. Stroud stated it is inappropriate to have a Zoning Board of Appeals Member make comments on an application to the Planning Commission and then hear an appeal regarding the business. He stated Member Stopczynski remarks were based on her investigations, which is not allowed; the evidence to be reviewed by the Zoning Board of Appeals should be based on the application materials, not evidence found by a member of the Zoning Board of Appeals. Mr. Stroud stated the second letter is responding to Mr. Haley's request to have a public hearing scheduled for his application. He stated all matters to be considered by the Zoning Board of Appeals when reviewing Mr. Haley's request are a matter of state statute. Mr. Stroud stated the Zoning Enabling Act allows for the creation of a Zoning Board of Appeals and states applications shall be taken within a timeframe prescribed by the Zoning Board of Appeals. He stated the Zoning Board of Appeals rules and procedures state an application to appeal must be submitted within thirty days of the decision. Mr. Stroud stated Mr. Haley has asserted in his letter that thirty days is in reference to thirty days after the meeting minutes where the decision was made are approved; however there is no language in the state

statue or Zoning Board of Appeals Rules and Procedures that states this. He stated Mr. Haley cited in his letter a previous court case, *Davenport v City of Grosse Pointe*, however the court case was regarding the appeal of a decision of a Zoning Board of Appeal to Circuit Court which is not what is being discussed tonight. He stated the other two court opinions cited by Mr. Haley in his letter are unpublished cases, which means they do not have to be followed; they are also regarding submitting an appeal to Circuit Court. Mr. Stroud stated Mr. Haley also references the Open Meetings Act in his letter; the Open Meetings Act states all decisions shall be made at a public meeting, the Zoning Board of Appeals Rules and Procedures requires an application to be filed within thirty days of the decision. He stated the Zoning Board of Appeals Rules and Procedures allows for consideration for the filing of a late appeals if there are practical difficulties or extenuating circumstances; however, the Zoning Enabling Act states a timeframe shall be established. Mr. Stroud asked the Zoning Board of Appeals to think about the practical difficulties; Mr. Haley filed his first appeals application within seventeen days of the Planning Commission's decision. He stated it is difficult to believe Mr. Haley was not aware of a deadline or that there were any special circumstances that prevented Mr. Haley from submitted an appeals application. Mr. Stroud asked that the Zoning Board of Appels deny Mr. Haley's request.

Mr. Kevin Haley stated he finds Mr. Stroud's letters interesting; he would point out that Member Stopczynski was not speaking in favor or against the application. He added she came to speak as a citizen interested in the matter. Mr. Haley stated he cannot confirm if he filed his previous appeals application within seventeen days or not. He stated he knew there was a limit of thirty days to apply, but it is not stated in the Ordinance and is not stated on the application. Mr. Haley stated the thirty days is addressed in the Zoning Board of Appeals Rules and Procedures which is not available in a public domain, which Ms. Hatt has confirmed. He stated his application was ready within the thirty days, but Ms. Hatt was not available and she requires a meeting to be set to accept applications. Mr. Haley stated the Zoning Board of Appeals Rules and Procedures are not available in a public domain, and when information was requested by an attorney, they were still not produced. Mr. Haley read an e-mail communication between Attorney Ellen Kleiman Ward and Ms. Williams; he stated Ms. Kleiman Ward asks for the information and Ms. Williams refers her back to the Staff Report. He stated if an attorney asks for the information and does not receive it, how is he supposed to know it exists; how is he supposed to know a super-secret document exists. Mr. Haley stated Ms. Hatt was out of the office for a week on vacation and the previous week was Christmas; he called Ms. Hatt the Monday she returned from vacation to submit his application for appeal. He stated a citizen in this case would not have had an opportunity to know about the deadline. Mr. Haley offered to answer questions.

Public Hearing of Appeals Applications: None

Old Business: None

New Business: Ms. Williams informed the Board of Appeals application BA-8-19-11 was remanded back to the Board from Circuit Court. She stated the previous staff report, Finding-of-Fact, meeting minutes and information from the Circuit Court Judge are included in their packets.

Member Cleary stated she believes the Board of Appeals was clear in their discussion, but does not believe the conversation was translated to the motion. **Member Chmielewski** asked if all Members were present when the application was heard; she also asked if there were any questions. **Member Chmielewski** stated the Zoning Board of Appeals should be discussing a new motion which clearly addresses Items A through E as required.

Ms. Shasta DeLong asked Member Chmielewski if she could speak. She stated she is the granddaughter of Skip and Karen Dowding, who could not be here this evening. **Member Chmielewski** said yes.

Ms. DeLong stated the Zoning Board of Appeals denied her grandparents application; they appealed the decision in Circuit Court and Circuit Court sent it back to the Zoning Board of Appeals for further consideration. She stated they are requesting a variance in the amount of thirty-one feet from the right-of-way; she is aware there is a proposed amendment to reduce the setback required to thirty-five feet. Ms. DeLong noted the Judge mentioned the size of the property as a reason to approve. She stated all of the houses located off from David Drive are serviced by the public sewer; she personally measured every home located off from David Drive to the right-of-way, only one home meets the setback. She stated the home that meets the road right-of-way setback does not meet the required rear property line setback. She stated

the proposed garage would use the same driveway as the house; if the variance is not approved, the construction of the garage would be out of conformity with the neighborhood. Ms. DeLong stated her grandparents are eight-one and eighty-eight, they own a company in Eaton County that employees two hundred people. She stated she does not know why they cannot construct their garage where they are requesting.

Member Cleary stated she recalls the request for the variance due to the applicants not wanting to infringe on the location of a play area and the applicants did not value their front lot as much as they did their back lot. She stated she does not find the infringement of a play area a practical difficulty and pointed out the applicants have other options to construct their garage that would meet the Zoning Ordinance requirements; they are not forced to obtain a variance because there are no other options, they have chosen to apply because they do not want to comply. **Member Chmielewski** stated she agrees she does not find that there is a practical difficulty. **Member Stopczynski** stated she does not find a practical difficulty either and noted a play structure is not permanent.

Member Cleary asked Ms. Williams if the board should affirm their previous decision or make a new motion. Ms. Williams stated a new motion should be made for the record.

Member Cleary moved to deny BA-8-19-11, Karen Dowding Trust for a variance from Zoning Ordinance Section 7.7.3 Minimum Setback from road right-of-way (building shall be a min of 67 feet from a road right-of-way) to allow for construction of a 26' x 40' pole barn to be located 31 feet from the David Drive Right-of-Way at 2898 David Drive, Sec. 33, Brookfield Township. They find that:

- A. There is not a practical difficulty in carrying out the strict letter of the ordinance as the proposed placement of the pole barn and reason for the request is to avoid a play area. The location of play area is not a practical difficulty.
- B. There is nothing unique about the property that presents a practical difficulty; therefore, there is not a practical difficulty due to unique circumstances related to this particular property.
- C. The applicant created the problem by not wanting to construct the proposed pole barn in the middle of their lot to save the back of the lot for grandchildren.
- D. Altering the essential character of the district or neighborhood is not relevant as the motion is to deny.
- E. Minimum amount necessary is not relevant as the motion is to deny.

Member Chase supported. A roll call vote was taken with five (5) voting aye and none (0) voting nay. Motion carried.

Member Chmielewski stated the Board of Appeals has a letter from Mr. Kevin Haley requesting a public hearing to be scheduled for an appeals application. She stated the Board of Appeals is not here to discuss the actual case, but rather to make a decision on a procedural matter and if a public hearing should be scheduled.

Member Chmielewski stated the board should start by addressing the letter received and public comments made regarding Member Stopczynski. **Member Stopczynski** stated she is fine with abstaining if the board requests, however she would like to be clear, she did not speak in favor or against the application. She stated she only pointed out what she thought the Planning Commission should have when making a decision; there was no ill intent. She stated she has no connection to anyone related to the properties. **Member Stopczynski** stated she does not have any bias, but if the board feels she does she will abstain. **Member Chmielewski** stated if the board were to hear an application in regards to the business or property Member Stopczynski should be recused; however, the present conversation does not have to do with the business or property. **Member Cleary** stated the question before the board is are they going to hear an application; she sees no reason Member Stopczynski should be recused from this conversation.

Member Cleary noted the question before the Board of Appeals is are there extenuating circumstances, which prevented Mr. Haley from submitting his appeals application by the deadline. She stated she does not believe Mr. Haley was not aware of the deadline because he has met the deadline in the past. **Member Chase** agreed.

Member Cattron moved to not schedule a public hearing for an appeals application for Mr. Kevin Haley because Mr. Haley was well aware of the process. There is no justification for extenuating circumstances for the request. **Member Cleary** supported. Motion carried.

Upcoming Cases: Ms. Williams informed the Board of Appeals there are no applications to be heard at their March 3, 2020 meeting.

Public Comments: Mr. Haley stated he respects the boards decision. He added because it is a matter of personal character, he wanted the board to know he was not aware of the deadline. He stated he was not trying to pull a fast one on the Board of Appeals.

A motion was made by **Member Cleary** to adjourn the February 4, 2020 Board of Appeals meeting. **Member Cattron** supported. Meeting adjourned at 6:37 p.m.