

EATON COUNTY BOARD OF APPEALS MINUTES
June 6, 2017

Call to Order: Chair Mark Stahl 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: Mark Stahl, Michael Bell, Nikki Chmielewski, Tim Cattron and Donald Chase

Absent: Charamy Cleary

Staff Present: Claudine Williams and Brandy Hatt

A motion was made by **Member Chmielewski** to approve the agenda for the June 6, 2017 meeting. **Member Cattron** supported. Motion carried.

A motion was made by **Member Chmielewski** to approve the minutes from the May 2, 2017 meeting as printed. **Member Chase** supported. Motion carried.

Communications: None

Public Comment: None

BA-6-17-6: Request by Lynn Ball for a variance from Article 14.28.2. I. Preexisting Roads to allow for the creation of a new parcel off from a preexisting private road (Eaton River Trail) without expanding the easement area for the cul-de-sac. The address of the property to be divided is 4679 Eaton River Trail, Sec. 1, Hamlin Township.

Staff Report: Ms. Williams read the staff report and Site Plan Review response from the Barry-Eaton District Health Department into record. Ms. Williams also informed the Board of Appeals members, Mr. Marc Barlow, a neighboring property owner e-mailed an additional response to the application that members have at their seats for their review.

Member Stahl asked for clarification; in order for the land division to occur the applicant needs three things, a maintenance agreement, a private road upgrade application and this variance. Ms. Williams said the applicant needs a recorded maintenance agreement or the approval of this variance and then the private road upgrade application. **Member Stahl** stated he recalls hearing a similar application. Ms. Williams said yes, however the Zoning Ordinance was changed after the Board of Appeals heard the application regarding the Risner Lane cul-de-sac.

Applicants Statement: Mr. Lynn Ball stated he has listed his house for sale. He said he has purchased ten acres adjacent to his property, with the intent of dividing his property and constructing a new house for himself. He stated the developer of Eaton River Trail failed to record a maintenance agreement in 2003; the road was upgraded and approved, but the county failed at requiring the maintenance agreement prior to approval. Mr. Ball stated if his home sells quickly, this will delay the construction of his new home. He stated he had a similar variance approved two years ago on Risner Lane. He stated the only legal authority the private road association has is regarding the maintenance of the road; he believes they have lost sight of that because they want to put restrictions on building and adding lots. Mr. Ball stated the private road association does not have the legal right to stop him from building his retirement home. Mr. Ball stated he does not require a variance to move forward, but does require a maintenance agreement which they do not have. Mr. Ball stated they have done a good job of maintaining the private road for the past 14 years.

Member Bell asked Mr. Ball if he has a legal easement to access the property he would like to construct on by using the private road. Mr. Ball said yes. He stated the change in the cul-de-sac area is the easement area only; the physical area of the cul-de-sac did not change. He stated he lives on the last lot on the road and was able to purchase an additional ten acres. Mr. Ball stated adding one lot to the private road is not an over burden. **Member Bell** asked if the private road will serve the new parcel. Mr. Ball said yes, he added he is not extending the private road.

Member Stahl invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: None

Speakers in opposition: Ms. Renee Tabor, 4460 Eaton River Trail, read a letter of opposition to the request into record. She stated she is the president of the Eaton River Trail Private Road Association. Ms. Tabor stated present with her, also in opposition of the request are Nathan and Peg Foote, Barbara Sagaert, Marc Barlow and Joseph Emfield. Ms. Tabor stated Mr. Emfield will speak on their behalf.

Mr. Joseph Emfield, 4588 Eaton River Trail, stated it is difficult to stand and speak against your neighbors. He stated he recently joined the community and is working to take an active role. Mr. Emfield stated he has taken portions from the private road association meeting minutes and the submitted letters of opposition to compile what he would like to say. Mr. Emfield stated he would like to address why the request does not comply with items A-E and why it should be denied. He stated the legal description of the private road and parcels it serves are on file; he gave the liber and page numbers as they have been recorded. He stated the bylaws are also recorded on file. Mr. Emfield stated both the bylaws and deed restrictions were given to him when he purchased his property. He stated when he approached Mr. Sepeter, the original developer of the expansion, he was informed by design, a survey was completed that shows parcels one through ten. Mr. Emfield stated part of the sales pitch was the peace of mind that there would be no new lots or further extension of the road. He stated there is no practical difficulty. He stated he acknowledges the land division act allows for the division of property, but there are civil cases similar to their situation that should take precedence. Mr. Emfield stated the private road association would have liked Mr. Ball to approach them prior to making this application. He stated they would like him to adhere to the bylaws. Mr. Emfield stated by design the road is its own parcel owned by the private road association. He stated Mr. Sepeter wrote no further divisions on all deeds prior to selling the property. He stated this application is different than Risner Lane because the road is a parcel of land owned by a road corporation. Mr. Emfield stated if the original intent of the developer is changed it could create an inequity for the remaining property owners.

Mr. Marc Barlow, 4227 Eaton River Trail, stated it seems to him that Mr. Ball is requesting a variance regarding a maintenance agreement that has not been recorded. He stated that does not seem like a practical difficulty because the private road association can develop and record a maintenance agreement; if this is done the variance is not needed. Mr. Barlow stated the creation of new parcel off from a paved private road could damage the road. The traffic for the construction of the new homes could include gravel haulers and cement trucks which could all damage the road. He stated the association has no guarantee that if Mr. Ball splits his property now, further splits will not be done. He stated no compensation has been offered for the additional homes that could be built on the road for repairs.

Public hearing closed at 6:29 p.m.

Discussion/Comments: **Member Stahl** stated the Board of Appeals is not deciding if the property can or cannot be split. He stated the variance could have an impact on the potential division of the property, but asked that the discussion stay focused on the variance request to allow for the upgrade to a preexisting private road without bringing the existing cul-de-sac up to current Ordinance requirements.

Member Chase stated he does not believe the application should be approved; he does not believe the circumstances are unique to Mr. Ball's property. **Member Stahl** stated Member Chmielewski was present for the Risner Lane application. He stated that is the most similar application he can think of to this one. He stated the differences he can think of between the two applications is that Mr. Ball did not own property at the cul-de-sac on Risner Lane; Mr. Ball owns a large portion of the cul-de-sac off from Eaton River Trail. **Member Stahl** stated in this case if the easement area does not fit, it could be re-established completely on Mr. Ball's property.

Member Catron stated the applications are also different because Eaton River Trail is its own parcel of land; the property owners off from Risner Lane each own to the center of the road. **Member Chmielewski** stated she agrees with Member Catron, there is a difference between the applications. **Member Catron**

stated he does not find a practical difficulty and he is having trouble answering items A and B. **Member Chmielewski** stated if the private road association came up with a maintenance agreement this variance would not be needed. **Member Stahl** stated he agrees. **Member Chmielewski** stated there are other options that do not require a variance, therefore she is struggling with item E; how could this request be in the minimum amount if there are other options that allow Mr. Ball to proceed without a variance. **Member Stahl** noted the variance would not be needed if a maintenance agreement was recorded. **Member Bell** stated the private road association has control over the private road upgrade application and until they agree and record a maintenance agreement, even if this variance is approved, Mr. Ball still could not proceed.

Member Chmielewski moved to deny BA-6-17-6 Lynn Ball for a variance from Article 14.28.2. I. Preexisting Roads to allow for the creation of a new parcel off from a preexisting private road (Eaton River Trail) without expanding the easement area for the cul-de-sac. The address of the property to be divided is 4679 Eaton River Trail, Sec. 1, Hamlin Township. They find that;

The proposed variance does not meet Item E. minimum amount necessary to overcome the inequity of the parcel. There is an option to record a maintenance agreement.

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

BA-6-17-7: Request by James and Brittany Middaugh for a variance from Ordinance Section 7.7.3 to allow for reconstruction of a legal non-conforming covered front porch to be located 27 feet from the Mulliken Road Right-of-Way and Ordinance Section 7.4A.2. A.1 to allow for reconstruction of a legal non-conforming second pole barn on their property located at 5088 Mulliken Road, Section 15, Chester Township.

Staff Report: Ms. Williams read the staff report into record.

Member Chmielewski asked if items A-E would need to be addressed if the Board of Appeals were to decide on the application based on Ordinance Section 4.6.7. Ms. Williams said no; why there is no adverse effect would need to be addressed.

Applicants Statement: Mr. James Middaugh stated they are asking for four (4) more feet to the garage because the one damaged by the storm, which was 22 feet, was not long enough for his truck. **Member Cattron** asked Mr. Middaugh to explain the building size statement from his application. Mr. Middaugh stated the existing (old) barn was only seven feet, eight inches tall, which was not enough clearance for this truck either. **Member Chmielewski** asked if the proposed garage has already been constructed. Mr. Middaugh said no.

Member Stahl invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: none

Speakers in opposition: none

Public hearing closed at 6:47 p.m.

Discussion/Comments: **Member Chmielewski** stated she is leaning toward hearing the application under Ordinance Section 4.6.7 to reconfirm the porch and barn as legal non-conformities. **Member Stahl** stated the Board of Appeals heard a few similar cases a couple of years ago, also due to a storm. **Member Chmielewski** stated nothing has changed regarding the surrounding property, therefore she does not believe there is an impact. She stated this would be an improvement because the previous building was more than forty years old.

Member Cattron stated he visited the site; the proposed barn would be set back in the back corner of the lot. **Member Bell** stated he does not have an issue with the request. **Member Stahl** noted they are requesting to make the barn slightly larger, but their request is the standard size for a barn.

Member Chmielewski moved to approve BA-6-17-7 James and Brittany Middaugh for a non-conformity appeal which allows for the reconstruction of a legal non-conforming covered front porch to be located 27 feet from the Mulliken Road Right-of-Way and allows for the reconstruction of a legal non-conforming second pole barn (24' x 26') on their property located at 5088 Mulliken Road, Section 15, Chester Township.. They find that;

There is no adverse effect on the public health or safety of the neighboring properties because the applicants are restoring what was previously on the property.

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

BA-6-17-8: Request by David Yoder for a variance from Article 14.13.2 C. outdoor storage for a Home Business; variance amount requested is 1,450 sq. ft. for a total outdoor storage space of 2,300 sq. ft. for a proposed Home Business to be located at 5913 Valley Highway, Section 7, Carmel Township.

Staff Report: Ms. Williams read the staff report and approval from the Barry-Eaton District Health Department into record.

Applicants Statement: Mr. David Yoder stated he has nothing to add to the staff report. **Member Chmielewski** asked Mr. Yoder to describe his business. Mr. Yoder stated he assembles building materials for his brother's construction business. **Member Stahl** asked if he constructs pre formed, engineered lumber. Mr. Yoder said yes.

Member Stahl asked Mr. Yoder for the dimensions of the work space area he is requesting a variance for. Mr. Yoder stated he is not requesting a variance for his work space area; rather he is requesting a variance for his outdoor storage area. He stated due to the type of materials and how it needs to be stacked, he needs to have a 10' x 230' outdoor storage area. **Member Cattron** asked if the pieces are bundled up and ready to leave. Mr. Yoder said yes.

Member Stahl invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor: none

Speakers in opposition: none

Public hearing closed at 6:58 p.m.

Discussion/Comments: **Member Chmielewski** stated she is having trouble with the request being related to the property. **Member Stahl** asked Ms. Williams about similar businesses and applications previously heard by the Board of Appeals. Ms. Williams stated there are two similar cases previously heard by the Board of Appeals that were approved. Ms. Williams read the findings and facts for both cases.

Member Chmielewski stated she believes the applicant is requesting the minimum amount necessary, but she is still struggling with the request being unique to the property.

Member Stahl stated he believes the board has more to discuss; rather than rushing through the application he would rather get the decision correct.

Member Chmielewski moved to postpone application BA-6-17-8 David Yoder to the July 11, 2017 Board of Appeals Meeting.

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

Old Business: None

New Business: None

Upcoming Cases: Ms. Williams informed the Board of Appeals there is one new case in addition to Mr. Yoder's application to be heard at the July 11, 2017 meeting.

Public Comments: Mr. Lynn Ball, 4679 Eaton River Trail, stated he is confused by Member Stahl's comment that because he owns property off from the cul-de-sac he himself could expand the easement area for the private road. **Member Stahl** stated the cul-de-sac could possibly be moved on to Mr. Ball's property. Mr. Ball stated getting the banks to re-do the mortgages and surveys is not possible. **Member Stahl** stated he was just thinking out loud; however, the decision to deny the application was based on the fact that a variance is not needed if a maintenance agreement is recorded. Mr. Ball stated the private road association has no right to deny the division of his property. He stated the association is strictly for the maintenance of the road. **Member Chmielewski** stated the Board of Appeals did not render a decision on if the property can be divided or not. **Member Stahl** stated the decision to deny was based on the fact that the variance request is not necessary if a maintenance agreement is recorded and the association applies for the private road upgrade application. Mr. Ball stated he believes the county has some responsibility in this matter because the maintenance agreement was not required when the road was upgraded prior to approval of the upgrade.

A motion was made by **Member Chmielewski** to adjourn the June 6, 2017 Board of Appeals meeting. **Member Catron** supported. Meeting adjourned at 7:10 p.m.