

# **Milton Township Zoning Board of Appeals May 15, 2006**

Members present: Chairman Lein, Anderson, Jankowski, Atkinson, Bryant, Llewellyn and new member David Kopkau

Also present: Weinzapfel and 21 audience members

The Chairman called the meeting to Order at 7 PM and the Pledge of Allegiance was recited.

Addition to agenda:

Chair Lein stated that Keith Termaat, representing the Milton Neighbors, asked to speak before approval of the minutes of the Special Meeting of 5.1.06. There were no objections from the board. Motion made by Jankowski to approve the agenda as amended. Seconded by Llewellyn. Motion carried.

Keith Termaat submitted a press release, dated May 15, 2006, from the Milton Neighbors in opposition of the construction of a large septage storage tank on the property on US-31 across from Sutter Road and asked that the board delay approval of the minutes for 120 days. He stated that he lives near the proposed site and that Milton Neighbors believe that the proposed septic tank is a health risk and endanger the wetlands, Mitchell Creek and the Lake Michigan watershed. He stated that this is a large-scale commercial trucking operation, hauling septage from multiple residents, mine included, and then would be distributed to multiple farmers. He stated, that a week ago, they urged the Board, Supervisor Bargy and Board Member Pharo to ask their fellow farmers to reconsider their support or risk losing support of the residents for Farmland Preservation. Commercial septage storage tanks are not consistent with the new Master Plan. He requested the ZBA table approval of the minutes of 5.1.06 for 120 days to allow for public debate on the merits of the commercial septage storage tank. Lein asked Termaat if he was present at the public hearing on the issue May 1. Termaat stated he was aware of the meeting and could have attended but did not.

The board discussed delaying approval of the minutes of 5.1.06:

Anderson said he wished Termaat could have attended because the issue is not as cut and dried, as it appears to be. He stated you keep calling it a commercial business and we had to determine if it was commercial or agriculture and we did that. The people need to be educated that the DEQ has oversight of the project and conduct inspections.

Lein said for the record that the Board had determined that the project is agriculture and not a commercial enterprise.

Llewellyn stated he was in favor of delaying approval of the minutes until we have further input from the public. Jankowski said that further input was irrelevant, the meeting has occurred and the minutes document that meeting and should be promptly reviewed and approved. Tabling the

minutes will not change the outcome of the vote or what happened at that meeting. Weinzapfel said that delaying approval of the meeting minutes can't change the decision that was made. Lein suggested having Mr. Blakeslee and the manufacturer in for an information session.

Motion made by Llewellyn to table the minutes for 120 days to allow for more input. Seconded by Atkinson.

Llewellyn stated that if it gives them more time then there is no reason why they should not have more time to do what they have to do. Doug Strang said that taking more time couldn't reverse the decision. They will do what they want to do. Keith Termaat said he feels that there would be new data that could affect the outcome of the decision. Don Watkins of NW Torch Lake Drive spoke in support of delaying approval of the minutes by 120 days to allow more time for discussion to avoid the threat of legal action.

Lein said that what he is hearing is that if the minutes are approved tonight, then the Milton Neighbors will take the township to court. Llewellyn said there might be additional information that the board might like to hear and there is no hurry to approve the minutes. Lein said more information is helpful but he doesn't feel that this should delay the approval of the minutes. Anderson said he doesn't have a problem with tabling the minutes if it makes them feel better because we are here to serve the people. Lein said there was a public hearing, but the public would like more of a chance to give input on the process. Lein called for a vote on the motion.

Roll Call:

Llewellyn: Aye

Jankowski: Nay

Atkinson: Aye

Kopkau: Abstain

Lein: Aye

Bryant: Nay

Anderson: Aye

Motion carried: 4 Aye-2 Nay 1 Abstain. Approval of these minutes will be postponed until September.

Lein said for the record, there is a lot of misinformation going around the township. He wishes people actually came to the meeting because there seems to be a need for clarification and because we are here for the people, more people can be informed with factual material. That's why I voted yes on this motion.

Variance Request: 06-04

Owner: Mary Matuska Trust

Property Tax Number 05-12-419-002-10

Property address: 3417 NW Torch Lake Drive, Kewadin, MI, 49648

Mr. John Matuska gave his presentation. His family is requesting a 12-foot width variance from Section 117.212/117.216 for construction of a 24x18 foot beach within the 25-foot shoreline

protection strip so that his children and elderly family members can enjoy the beach area. He presented pictures of the current beach. The family could stay within the ordinance by going 12x18 on the beach, but he feels this would look out of place and less in accordance with the township zoning regulations. He said that the 12-foot allowance in the exception is inadequate and not what he wants.

There is no correspondence on this variance request.

Lein asked if Matuska had attended the Planning Commission's recent subcommittee meetings on this issue of the shoreline protection strip? Matuska said he did not go and wasn't aware that these were public meetings.

Lein asked if there was anyone in the audience who would like to speak in favor of the request. Doug Strang of Lake Ave. said he has been going to the subcommittee meetings and he feels that the soils vary tremendously from one end of the lake to the other. He feels that the subcommittee is not heading in the right direction. He feels that the beach should be permitted as long as it's not a butchering of the landscape.

Lein asked if anyone wished to speak in opposition  
No one wished to speak

Lein said that the Planning Commission subcommittee is still looking at this issue regarding where the ordinance should be regarding the new Master Plan. The subcommittee is considering sticking to the 12-foot limit.

The board began deliberations:

Lein referenced the information in Staff Report for Public Hearing 06-04. Lein also said that this is a precedent setting issue. If a decision is made to approve this, there must be reasons to support that claim.

Anderson said Matuska could be changing the structure of the landscape and that could be a detriment to the environment and water nearby. He feels this is a touchy issue and if we approve this, there would be many other people making this request.

Lein said the Planning Commission feels that much more study needs to be done on this to determine what could be safe regarding soil erosion. As it stands now, we have our current ordinance to go by.

Atkinson said this would be setting a precedent to others and there are other options without needing a variance.

Jankowski said that the shoreline protection strip is hallowed ground because no one wants to damage the ecosystem. He feels we should stick closely to the ordinance.

Lein addressed Mr. Matuska saying that ZBA decisions are final. One option is to wait a couple years to see if the ordinance has changed and he may withdraw his request at this time if he wishes. If this is decided now, we cannot go back on that decision. Lein described the Master Plan process to Matuska as well as all of the changes that will be going on with the Zoning Ordinance in the upcoming months/years. The subcommittee and the Planning Commission are leaning toward strict compliance with the current ordinance. Lein said once a decision is made by the ZBA, the minutes will be approved at the next month's meeting, and then you have 21 days to challenge it in circuit court from that date.

Weinzapfel said that if the variance is not withdrawn tonight and an unfavorable decision is made then if the ordinance changes in the future to allow more frontage that would trump the decision made tonight.

Matuska said he understands why you would want to stick with the rules as they stand. Whether you allow 12 or 24 feet, the same problems could occur. He realizes this could be precedent setting, but he asks that you consider the width of the lot at 242 feet. He feels that this could absorb the 24-foot beach. They will be very careful to make sure the ecology is not damaged.

Lein said the applicant would like us to proceed with his variance request. This board must look at the ordinance as it stands now.

Weinzapfel said Kopkau has been newly appointed and will not participate, so there must be a quorum (4) to approve the variance. Matuska said he would like to proceed.

Motion by Jankowski to deny the request based on 117.216. Seconded by Anderson, citing 117.216

Roll call:

Jankowski: Yea citing 117.216

Bryant: Yea citing 117.216

Llewellyn: Yea citing 117.216

Lein: Yea citing 117.216

Atkinson: Yea citing 117.216

Kopkau: abstained

Anderson: Yea citing 117.216

Motion carried: 6 yeas, 0 nay, 1 abstaining.

Lein said there are some people here to deal with Primary Structure/Primary Dwelling. The Planning Commission was looking at a clarification for the ZBA. The Planning Commission recently recommended that it is satisfied with the present ordinance and supports the ZA determination that an accessory structure is non-conforming. The Planning Commission believes that the expansion of a non-conforming structure could not be approved by the ZA. An extension of a non-conforming use could be approved. If you would like further information, please contact Weinzapfel.

Variance Request 06-03

Owner: Arnold Gartner

Property Tax Number: 05-12-725-011-00

Address: 11673 SW Torch Lake Drive, Rapid City, MI 49676

Mr. Gartner is requesting a 14-foot front yard like-side setback variance for construction of a deck. Dr. Gartner gave his presentation regarding the variance. The house is semi historical, Henry Ford stayed in the house and was involved in renovating it. The house is solid and built as a four-season house. The house has been brought up to date; unfortunately, they have poor access to the lakefront. Eight years ago, they applied to add a new deck to the lake-side and it was granted. This time, doing measurements, he found that part of the house is in the setback area. Last year when the side deck started crumbling, he decided he wanted to put on a new side deck and connect it to the front deck. The deck was built quickly because winter was coming in and he was having septic problems and dealing with installing a new septic field. The 12x12 section of the new deck is in the lake-side front yard setback area and if it's removed, he will not have a way to get from one deck to the other deck. It's a safety issue as well as a convenience issue. It's only an extension, not an expansion.

Lein asked the location of the deck on the supplied sketch?

Lein asked if there was any correspondence? There was none.

Lein asked for those who would like to speak in favor  
No one wished to speak.

Lein asked for those would like to speak in opposition.  
No one wished to speak.

Lein opened for board deliberations:

Atkinson noted on the original design, the deck was drawn at an angle. Gartner said he realized at the time of the sketch that there was a problem with the setbacks. But the angle, as drawn, would still need a variance; however, the deck was built and squared off.

Jankowski said he feels that the applicant needs to adapt with where the house is located on the lot. It encroaches within the 50-foot setback. If you have to walk down stairs to get to the other deck, then that may be what you must do. The proposed deck, which is already built, is in violation of the setback.

Weinzapfel clarified the drawing stating only part of the side deck is in the front yard setback.

Anderson said that Gartner knew before the builder built it that it was in the setback. Anderson said if we make precedent that someone goes ahead and does something and then comes back after the fact and the board allows it, we are setting a bad precedent. There are other ways to make the house safer and usable. Atkinson said she agrees with that statement. Whether or not the deck has been built has no relevance to our decision. The board should make the decision as

if the deck has not been built.

Lein asked Weinzapfel for clarification regarding a permit pulled in 2005? Weinzapfel stated measurements provided on the permit were 57 feet to the High Water Mark (HWM) but when he went to the site to measure, it was actually 37 feet to the HWM.

Bryant asked if there were any other measurements taken to show the distance to the water's edge (HWM) when the septic drain field was installed. Gartner said he was not aware of any measurements at that time. I measured wrong. I realize I made a mistake.

Jankowski moved to deny the variance based on 117.216 and 117.802. Seconded by Llewellyn.

Roll Call:

Atkinson: Yea based on 117.802 and 117.216

Llewellyn: Yea based on 117.216

Anderson: Yea based on 117.216

Jankowski: Yea based on 117.216 117.802

Bryant: Yea based on 117.1810A and 117.802

Lein: Yea based on 117.802 and 117.103

Kopkau: abstain

Motion carried: 6 Yea, 0 Nay, 1 abstaining.

Lein said that Mr. Gartner has the option to appeal the decision within 21 days to the Circuit Court level.

Variance Request 06-02

Owner: Douglas and Anita Uden

Property Tax #: 05-12-725-005-10

Property address: 11567 SW Torch Lake Drive, Rapid City, MI 49676

The Udens are requesting a variance of an eleven-foot front yard (lakeside), fifteen-foot rear yard, and a two and one-half foot side yard setbacks for construction of a new home. Mr. Uden made his presentation. He stated in Prey's Harbor that the lots are shaped like pie wedges with odd lot line angles. The zoning is R-1 which requires a min. 20,000 square feet for the lot, these lots are half that. He showed pictures of the site and his lot lines. He discussed the proposed footprint of the new house and his need for a variance.

Anderson asked if he had elevations for the new house. Uden said he does have a rough sketch.

Mr. Uden said the house to the north was built 15 years ago. The deck is 35 feet to the shoreline. His brother in law's house is to the south. It is 43 feet from the water. On the roadside, the whole area north and south doesn't meet the setback along the road. Uden has owned the property for 10 years, which was part of a parcel of cottages that were distributed to family members.

Anderson said he looked at the old existing garage that sets almost entirely within the side yard

setback. Mr. Uden wants to attach this existing structure to his new house with a roof ridge. Anderson stated the old garage ridge and roof would not support that weight and the ridge would have to be reconstructed, then the footings wouldn't be strong enough to support it. I think he is proposing to tear down the garage and rebuild it in the current footprint.

Lein asked when the applicant was looking to start the project? Mr. Uden stated he was not sure, he would like to move the septic field across the road and move the house back 14 feet and get a variance on the garage to see if it would drain better. He may build it himself. Lein said he understands that there are some lots in the area where some variances have been granted but asks Uden to re-consider. He is pulling the structure back and moving the septic field across the street, on this small lot he is asking for a side yard variance and he wants to keep the old non-conforming garage plus ask for a front yard and rear yard variance.

Uden said that looking at the site, it looks in proportion to homes in the surrounding area. Lein said we can continue on tonight or you may want to prepare a better site plan and withdraw your application today.

Anderson said the plan is not well defined. Lein said the information that has been presented is not enough to make an accurate decision. This is his feeling. It may not be the feeling of the rest of the board.

Uden said what he is asking for is not outlandish. Lein said he should talk with Weinzapfel and see what recent variances have been approved. Lein said there is serious safety concerns with the side yard variance request. Lein said that as a city planner/contractor, Mr. Uden has a good idea of where things need to be. Lein told Uden to talk with Weinzapfel and do more research. If you look at what you are seeking, it's larger than what has been granted in the recent past.

Jankowski said small lots handle small homes; large lots can handle larger homes. This is something that should be considered. Mr. Uden said that if he is to live here year round, he doesn't want to live in a seasonal-sized house. He asked how much of a reduction in the variance request is enough? Lein said the board couldn't answer that question without making a ruling.

Mr. Martin asked if the garage were taken out of the equation, would the board consider the variance in a more favorable light. Lein said the board couldn't answer that question without making a ruling.

Lein apprised Weinzapfel of the discussion since Weinzapfel just returned from an ambulance run. Lein stated he feels that Mr. Uden may be asking for too great a variance.

Anderson commented on the garage variance and the new plans for the garage valley. The new plans won't be supported by the building codes.

Weinzapfel discussed what he previously discussed with Mr. Uden.

Lein suggested the applicant do more research and come back with a more conservative request,

that is no guarantee of approval, but that is his recommendation.

Mr. Uden said he feels that he meets all of the criteria in section 4 of the variance request requirements. Anderson said he feels that Mr. Uden cannot prove that there would be a definite hardship from not approving the variance.

Lein said his big concern is the side yard. There is a sincere fire danger from having houses too close together. The ordinance states that the board should not add more obstructions.

Mr. Uden asked that if he modifies his variance request, would there be a way that he wouldn't have to come back here since he lives in Florida? Weinzapfel said Uden could send an agent in his stead.

Anderson asked Mr. Uden to bring accurate elevation drawings of the house. Mr. Uden said he doesn't understand why the board is concerned with the look of the house. Anderson said the board is not concerned with the look but rather with the size.

Lein asked if Mr. Uden would like to table the variance request and if so how much time would he like to have? Mr. Uden said he would like to have the issue tabled until the June 8, 2006 meeting. Lein moved to table this variance request until the next meeting. Seconded by Anderson. Motion carried.

Lein discussed upcoming meetings and announcements.

Lein said Kopkau has been appointed and he will begin training.

Lein said there would also need to be another appointment to the board since he will be moving out of state.

Jankowski said that due to the earlier motion, the minutes from May 1 would not be approved for 120 days; so as long as it's fresh in your mind, please make notes regarding any corrections.

Weinzapfel gave an update on violations.

Motion to adjourn by Llewellyn, seconded by Lein. Motion carried.  
Meeting adjourned at 9:35 PM.

Respectfully Submitted,

Adam Jankowski  
ZBA Secretary

***Note: These minutes are UNAPPROVED until APPROVED by the ZBA at its next meeting. Corrections, additions, and deletions will be noted in the minutes of that meeting.***