

**MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS
TUESDAY, JUNE 18, 2019, 6:30 P.M.,
COUNCIL CHAMBERS, CITY HALL, MIDLAND, MICHIGAN**

1. Roll Call

PRESENT: Board Members – O'Brien, Danielsen, Pnacek, Mead, Green

ABSENT: Board Member – None

OTHERS PRESENT: Grant Murschel, Director of Planning & Community Development;
Nicole Wilson, Community Development Planner, and four (4) others.

2. Appointment of Acting Chairperson

Danielsen made a motion to appoint Green as Acting Chairperson for this meeting, seconded by O'Brien. The motion was approved 5-0.

3. Approval of the Minutes

It was moved by Mead and supported by O'Brien to approve the meeting minutes of the regular meeting dated March 19, 2019 as written. The motion was approved unanimously.

4. Public Hearings

- a. **No. 19-04 – Scott and Jamie Kiernicki:** for two (2) area/dimensional variances at 1512 Sandow Road to permit a new carport. First, with the addition of the carport, the total accessory structure square footage on the site will exceed the maximum of 800 square feet by 352 square feet. Second, the number of permitted accessory structures will also exceed the maximum of one (1) by one (1) for a total of two (2) accessory structures. The subject site is zoned RA-1 Single Family Residential.

Wilson gave the staff presentation for Petition No. 19-04.

Scott Kiernicki, 1512 Sandow Road

Mr. Kiernicki presented photographs of his own property and the accessory structures that characterize the neighborhood that surrounds his property. Mr. Kiernicki additionally described approval to implement a 12" culvert to create a driveway from Solomon Street which would allow more convenient access the rear of the property into the proposed carport.

Mead inquired if the carport would be attached to the pole barn. Mr. Kiernicki responded that the two structures would not be attached, and that the ordinance would be followed with relation to distance from the pole barn.

Pnacek asked what the address is for the letter of support submitted. Mr. Kiernicki identified the property on a map.

O'Brien asked why the existing pole barn cannot accommodate the camper. Mr. Kiernicki explained that the height of the door of the pole barn as 10', and that 12' would be necessary to accommodate the camper.

Findings of Fact:

1. Property is located at 1512 Sandow Road.

2. Property is located across Sandow Road from Homer Township.
3. Property is owned by Scott and Jamie Kiernicki.
4. Property is zoned RA-1 Single Family Residential.
5. Property is located to the south of Solomon Street and east of Sandow Road on the corner.
6. Speed limit is 35 mph.
7. Currently two accessory buildings exist on the property, a pole barn and the shed pre-dates the annexation of the property into the City of Midland.
8. Many surrounding properties have several outbuildings.
9. Many adjacent property owners store recreational vehicles in the driveways and side yards.
10. Proposal is to build a carport to the east of the existing pole barn.
11. One (1) letter of support has been received, Zero (0) communications in opposition have been received.
12. Annexed into the City of Midland by 1996.
13. Property is less than two (2) acres in size.
14. Applicant has proposed the ordinance requirement of 10' distance from pole barn to carport.
15. Variance request is to exceed the total accessory structure square footage maximum of 800 square feet by 352 square feet and, to exceed the maximum number of permitted accessory structures of one (1) by one (1) for a total of two (2) accessory structures.
16. Proposed access to the proposed carport is from Solomon Street.
17. Drainage culvert must be approved by the City of Midland in consultation with the Midland County Road Commission.

Pnacek made a motion to approve two (2) area/dimensional variances for Zoning Petition 19-04 based on the findings of fact; Mead seconded the motion.

Danielsen commented on the condition of the property. Strict compliance reduces the benefit of property ownership and commented that the situation is unique due to the close proximity of an adjacent jurisdiction and that strict compliance is causing the hardship.

Mead commented that he agreed with the uniqueness of the situation and supports the petition.

O'Brien commented that the ordinance does not unreasonably prevent the property owner from utilizing their property and doesn't provide the security identified as justification. O'Brien further commented that the peculiarity of the property is adjacency to a township jurisdiction. O'Brien then commented that the situation has been created by the applicant.

Pnacek commented that he doesn't believe that security is provided via a carport structure, but that the unique situation of adjacent jurisdiction should be taken into consideration.

Green commented that the first criteria is more difficult, but gave recognition to the non-conforming structure. Green further commented on the neat and tidy nature of the property as it exists today.

No comments were made in support or in opposition.

Green closed the public hearing.

O'Brien: Yes

Pnacek: Yes

Mead: Yes

Green: Yes

Danielsen: Yes

- b. **No.19-05 – Ronald J Schauman:** for an area/dimensional variance at 5820 Countryside Drive to allow a reduction of the required setback for an existing wireless communication tower. The required setback is equal to the height of the tower (275 feet); the applicant is seeking to allow only a 200 foot setback from the property lines on all sides, a variance request of 75 feet. The subject site is zoned RA-2 Single Family Residential.

Murschel gave the staff presentation for petition 19-05.

Pnacek asked for a mapped location reference related to the communication in opposition.

Green asked for the basis by which the regulation ... Murschel commented that the tower was constructed and the ordinance was created in a time when a full lay down of the tower was required for clear distance in the event catastrophic failure; the letter transmitted by the tower owner's structural engineer identified that it is highly unlikely that there would be a catastrophic failure, but that in the event, the impacted radius would be 135 feet.

Pnacek asked for an estimated timeframe that the property was annexed. Murschel responded that we do not have that information at this time.

Mike Rybicki, MLR Engineering, Freeland MI

Mr. Rybicki presented an engineer's drawing detailing the findings of setbacks of 135' needed for the tower. Mr. Rybicki commented on the need for the zoning ordinance to be updated as relates to wireless communication towers and discussed the understanding for protections of the adjacent neighborhood. Mr. Rybicki commented that any new property owners would be advised of the tower's location.

Mead asked for a definition of a collapse zone. Mr. Rybicki responded that the collapse zone is the safe radius needed in the event of a catastrophic failure.

Danielsen asked about the inspection schedule for cellular towers. Mr. Rybicki responded that Mr. Lyons would be better able to answer that question.

O'Brien asked about the letter transmitted by the structural engineer and questioned its independence. Mr. Rybicki commented that the structural engineer is a representative of the tower's owners, but that as an engineer must stamp and seal the drawings.

Green asked about the number of parcels impacted if the setback is maintained at 300'. Mr. Rybicki responded that there would be 9 parcels impacted, specifying that seventy-two (72)

lots could be developed. Green asked about the comparative impact should the variance be approved at 200'. Mr. Rybicki explained that sixty-three (63) parcels could be developed.

O'Brien asked when the property was acquired and under what jurisdiction it was at that time. Murschel responded that the property was annexed into the city prior to the current owner's acquisition.

Tim Lyons, 300 Hecla Street, Calumet, MI

Mr. Lyons provided a history of the property and his ownership of it. Thirty-five (35) years ago, the 10-acre parcel was acquired by Mr. Lyons with the intention of developing a residential subdivision. Thereafter, the cell phone tower was developed at 200' from the property line. At the time of the construction of the tower, both the tower and the adjacent western parcel were compliant and within the jurisdiction of Homer Township. Mr. Lyons further commented that applying the 275' setback unfairly impacts the property owned to the west. Mr. Lyons went on to discuss the need for a 'looped' situation for utility purposes in discussion with city staff. Mr. Lyons commented that using there is existing utility infrastructure and capacity for this development that is currently underutilized. Mr. Lyons commented that the situation was not self-created but created by the blending of two jurisdictions.

Mr. Lyons offered a letter of support from the most closely adjacent property owner.

Danielsen asked about the tower ownership and the lease terms and if it could be removed. Mr. Lyons responded that there is a two-year termination clause and that there are significant impact to coverage in this area to doing so.

Mead commented that the lots on the west side of the tower radius would be looking directly at the tower and the potential impact of a storm. Mr. Lyons responded that the expert opinion transmitted identifies that the tower would collapse on itself. Mead asked when the last collapse had happened. Mr. Lyons responded that he did not know.

Green questioned that the thirty-year age of the tower and that there may be different technology than the self-collapsing design utilized more recently.

Mr. Green confirmed the location and dimensions of the proposed street.

O'Brien asked for clarification on the ownership of the properties impacted by the request. Mr. Lyons provided additional detail on the acquisition of the properties and cited the impact of this portion of the zoning ordinance on the adjacent property.

Mr. Lyons expressed uncertainty of the timing of implementation of the zoning ordinance that impact the height and setbacks of the tower. Murschel responded that the evaluation of a residential development would not be impacted by the 300' setback requirement because it is on a separate parcel. Murschel further clarified that the setback at the north, east and south would remain 300', however, the western property line provides a 200' setback due to the location of the existing property line.

Ronald Schauman, 10212 Willow Pointe, Freeland

Mr. Schauman commented that the tower company leases the property and that the liability of the tower rests with the tower company. Mr. Schauman commented that the tower company is willing to take on the liability of the reduced setback to the identified (by the tower company's structural engineer) 135 foot set back.

Pnacek commented that without the terms of the lease as relates to liability, the commission doesn't have the liability assurances he is referencing.

Mr. Schauman commented that there is a tower built on Jefferson Avenue with a setback of less than 40 feet. Mr. Green commented that that tower is much more recent and potentially was constructed in a different manner.

Tim Lyons, 300 Hecla Street, Calumet, MI

Mr. Lyons commented that the reduced distance to the tower could be viewed as an asset to younger generations.

No comments were made in support.

One (1) comments was made in opposition.

Teresa Dopp, 4215 Dublin Avenue

Ms. Dopp commented that she has lived in the area for her entire life. The tower is large and visible from her home. Ms. Dopp further commented that she is concerned about a fall and the impact of the tower's signals transmitted. Ms. Dopp expressed her concerns about the development team and previous alleged impact to her property during the development of the adjacent Hawk's Nest neighborhood. Ms. Dopp cited concerns with the operation of electronic devices in her home as a result of proximity to the tower.

Tim Lyons, 300 Hecla Street, Calumet, MI

Mr. Lyons further commented that the tower's lease requires maintenance and inspection of the tower on a regular basis.

Findings of Fact:

1. Property is located at 5820/5800 Countryside Drive.
2. Property is zoned RA-2 Single Family Residential.
3. Property is located to the north of Countryside Drive.
4. Property's entrance is from Countryside Drive.
5. Speed limit is 35 mph.
6. Existing tower is self-supported and is 275' in height.
7. Existing tower is owned by American Tower.
8. Brendan Smith, Engineer states the fall radius is 135'.
9. Applicant seeks to allow property lines at 200'.
10. Property to the north is zoned RA-1 Single Family Residential
11. Property to the south, east and west is ra-2
12. One (1) communication in opposition was received prior to the meeting.
13. One (1) communication in support (received at the time of the meeting).
14. Property was purchased in 2011.

15. Annexation was completed prior to the purchase of the property by its current owners.
16. Tower was built in accordance with the Homer Township regulations, prior to annexation.
17. Current City of Midland zoning regulations require a 300' setback for wireless communication towers adjacent to residential uses.

Green asked if there has been discussion around updating the zoning ordinance. Murschel commented that this is planned for review during the next Master Plan/Zoning update. Consensus of the board was to direct staff to work toward more clear regulations in the zoning ordinance as relates to the setbacks and placement of wireless communication towers.

O'Brien made a motion to approve petition 19-05 based upon the findings of fact; motion was seconded by Pnacek.

O'Brien commented that based on the criteria land can still be platted for single family residential homes, and that alternative platting could be accommodated with the identified 300' radius. O'Brien further commented that allowing the variance would provide substantial justice to the property owners but not for those property owners adjacent. While it is unique that the tower exists and was built under different regulations, the current owners had access to the zoning requirements for the tower at the time of acquisition.

Mead commented that there is a uniqueness to the request given the jurisdictional change and the varied requirements of each. Noting that the engineer identified a lesser drop zone requirement that he would be in support of the petition.

Danielsen commented that the technology that existed at the time of the construction correlates to the regulations of the zoning ordinance and believes that the platting could be adjusted to accommodate those requirements. Danielsen stated that he doesn't believe that this petition does substantial justice to both the existing property owners and those adjacent. Danielsen further commented that the situation is unique, but that the tower could be removed to accommodate the development. Danielsen further stated that the owners had access to those ordinance requirements when the properties were purchased.

Pnacek agreed with all Danielsen explained, except that strict compliance could still allow for arrangement of a potential development, and that the tower could be removed.

Green commented that there is opportunity to design the plat around the tower and that the variance provides justice to the applicant but not those surrounding the property.

O'Brien: No

Pnacek: No

Mead: Yes

Green: No

Danielsen: No

The motion to approve petition 19-05 was defeated by a vote of 1-4.

5. **Old Business**

6. **Public Comments (not related to items on the agenda)**

7. **New Business**

O'Brien commented that the evaluation of wireless communication towers should be evaluated. Murschel offered that a work session could be arranged in the fall to review petitions that have come before the board and the areas of the zoning ordinance that require a closer look.

Murschel commented that the next meeting of the Zoning Board of Appeals would require election of officers as Mr. Siemer cannot maintain the position of Chairperson.

8. **Decision Sheet Signatures**

- a. Petition No. 19-02 – Dave Rapanos

9. **Adjournment**

Green made a motion to adjourn the meeting, motion seconded by O'Brien. The meeting was adjourned at 8:45 p.m.

Respectfully submitted,



Grant Murschel - Director of Planning & Community Development

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