

PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS MINUTES

Members Present: Dennis Ward, Kathie Mahn, Ishwar Naik, Alayna Stagg, Kenneth Brostrom.

Members Absent: None.

Others Present: Felicia Jacob, Martin Leavitt, Estera Niculcea, Moise Niculcea, George Drosis, Thomas Jensen, James Frego, Planning Director Bruce E. Fowler, Associate Planner Suzanne Hicks, and Recording Secretary Marge Burkheiser.

1.0 Call Meeting to Order/Determination of a Quorum

Chairperson Naik called the meeting to order at 6:37 p.m. A quorum was present.

2.0 Approval of Agenda

Motion by Member Ward, supported by Member Stagg, to approve the agenda.

MOTION CARRIED

3.0 Communications and Announcements

Chairperson Naik noted a letter was received from the applicant of ZBA 08-01 Carpenter Crossing LLC, requesting postponement until the February 25th [2008] meeting.

4.0 Items from the Floor

None.

5.0 Election of Chairperson, Vice Chairperson, and Secretary

Chairperson Naik said that traditionally, this item has been moved to follow regular business [items]. He asked if the Members agreed.

Motion by Member Ward, supported by Member Mahn, to amend the agenda by moving item 5.0 to follow 7.1.

MOTION CARRIED

Item moved to follow 7.1.

6.0 Old Business

6.1 ZBA 07-05 Moise Niculcea

[submitted for reconsideration of September 24, 2007, denial of variance for setback within a required major road setback]

Chairperson Naik stated that at the last meeting [September 24, 2007] the members requested that staff get advice of the Township counsel, Township Attorney Bruce Laidlaw. He said Mr. Laidlaw produced a memorandum with his findings and that they also received a recommendation from the Township Supervisor to reconsider.

Director Fowler said he prepared a list of documents that were given to members. He said the only new one is the memorandum from Mr. Laidlaw; everything else was distributed at the previous two meetings.

Chairperson Naik asked if the CD that was distributed to ZBA members in their packets contained any new information.

Director Fowler said the CD had copies of previously-provided documents regarding ZBA 07-05. He said it was provided if anyone misplaced his/her documents or wished to verify that he/she had all pertinent documents.

Chairperson Naik said this is for a variance from a setback. He commented that there was quite a bit of discussion at the September 24, 2007, meeting and last month (December 17, 2007). He asked the applicant if there was anything new he would like to add that has not been heard before.

Martin Leavitt, of Sullivan and Leavitt, of Novi, Michigan, said he appreciated the opportunity, in December [17, 2007], to request a reconsideration based on the new evidence and as well as the changed circumstances, that were discussed. He said that when the home was built south of the home in question in 2002, there was no concern with the house's placement because of the configuration of the lot; it easily accommodated the house. He said before they designed the current home, they recognized that the lot in question, the lot to the north, had an unusual configuration, it was not pie-shaped but had five sides and they were concerned how the home would be placed on the lot. Before they designed the home, Mr. Niculcea went to the Township Planning Department and he discussed this with a "clerk." He left the Township with the understanding that there was a 50-foot setback. He said 50 [foot setback] was written on the site plan. He said, at the last meeting, Mr. Fowler said she [the "clerk"] did not recall whether or not she wrote the 50. He said that Mr. Niculcea's clear recollection is that it was. When Mr. Niculcea contracted the site plan, with the 50-foot setback applied, they had the architect plan the home along with the placement. Plans were developed, the plans were reviewed, a building permit was issued, and the home was started to be constructed. It [the house] went a long way towards completion until the 14th inspection, when it was discovered that Maple Road was a major road and the 50-foot setback did not apply; but should have complied with the supplemental section, which was a 110-foot setback from centerline. It was discovered that the home was substantially completed and 17 feet of it [the house] was within the 110 feet. They have followed the rules now and have a home that is almost completely built. There are only two things can happen: the ZBA can refuse to grant this variance, which would require his client to demolish that portion of the home and reconstruct it; or the ZBA can grant the variance. He said his

client has proposed to do substantial landscaping in addition to the existing landscaping. Mr. and Mrs. Niculcea have proposed putting a circle of trees around the driveway as well as a line of pines, which would blend the view of anybody driving north, and shield any unusual characteristics of the front elevations.

Member Ward questioned if the trees' height on the drawings was at planting or maturity and at what height they will be planted.

Moise Niculcea, applicant, replied the trees will be 10-12 feet.

Member Ward asked about the height of the shorter trees.

Mr. Niculcea said about 10-15 feet. He said they are existing trees.

Member Ward asked if a variance was granted, would the applicant be agreeable to a condition of the variance for the height of the conifers.

Mr. Niculcea replied that he would agree to at least 10 to 12 feet.

Member Mahn asked what types of conifers were proposed. She asked whether they were all one type or a variety so that if they are struck by disease, some of them would survive.

Mr. Niculcea said they would use two types: blue and natural spruce. He said they would be mixed to blend together.

Chairperson Naik asked where the portico [portecochere] is located.

Mr. Niculcea explained where the drive-through the portico [portecochere] is located and the landscaping in the area for the members.

Mr. Leavitt said the trees would serve two purposes. He said they would shield the presence of the home and alter the perspective and visually detract from the distance of the home from the road for the motorist and that the focus would be the cluster of trees. The southwest elevation was shown and stated that many of the trees exist and they propose to fill in the spaces between the existing trees. Looking from the east to the west the trees would provide perspective of the configuration or location of the home on the property.

Member Brostrom said that type of tree could grow to a considerable height and asked whether the trees would be far enough apart, so that the bottom branches do not interfere and start to die out.

Mr. Leavitt commented that he was very familiar with what Member Brostrom said. He said it was his understanding that a landscape architect prepared the plans and took that into consideration. He said that if the variance is denied and [the house] is torn down, it

would cost close to \$100,000.00, as a minimum and would not be in keeping with the original design, which would be a compromise at best, with very limited utility of the garage area and drive-through area. He said if the ZBA granted the variance it would avoid the hardship which the Ordinance talks about and would provide substantial justice. He referred to Section 60.05B. He reviewed the Findings.

1. **Strict compliance** with the 110-foot setback would render conformity unnecessarily burdensome. He said this structure was substantially completed at the time of discovery, by either side. He said compliance would be costly and would result in an extreme hardship and there would be tangible as well as intangible losses to the homeowner, even after they made the change and they would still have a home far from satisfactory in compliance with the original design. “We believe the first element is met.”

2. **Substantial justice to the applicant and other owners in the district.** He said substantial justice would be served to the applicants because this would avoid the hardship to the applicant, which is no fault of their own. He said looking from the point of view of the other property owners in the district; he believes this would be served because the variance would not affect any of the surrounding properties. He said it would not interfere with the public safety, maintenance, repair or the future development of Maple Road. He said Mr. Niculcea went to the WCRC, before the original hearing, and received its assurance the variance would not interfere with their present or future plans for the road. He said Mr. Walter, on his own, did the same and has confirmed, the Road Commission doesn't have a problem with this. “We feel the second element has been met.”

3. **Unique circumstances**---He said the Code talks about unique circumstances of the property; this is an oddly-shaped lot. The buildable area is severely curtailed notwithstanding the fact that it is 1.31 acres and has substantial frontage on Maple Road. The shape of the lot still severely limits how one can place a home of this size there. “We think the third element has been met.”

Chairperson Naik asked if Mr. Leavitt would repeat his explanation of Finding three.

Mr. Leavitt said repeated his explanation of item 3.

Chairperson Naik asked about the size of the home.

Mr. Leavitt replied 5,500 feet.

Chairperson Naik commented that you could easily put a smaller home on this property.

Mr. Leavitt agreed that you could put a smaller home on 1.31 acre parcel, but the plans were submitted for the bigger home and they were approved.

Mr. Leavitt continued with the fourth finding.

4. **Not Self-created**—He said there was a good faith reliance on the 50-foot setback. He said nothing was shown that their client or the Township acted in other than good faith. He said the problem wasn't found in the first couple of inspections; it took 14 inspections to be discovered. He said it was no one's fault; this is a unique circumstance. "We feel the fourth criteria that the problem was not self-created, was met."

5. **Non-conformities not considered**-Mr. Leavitt said at last meeting, Chairman Naik mentioned a concern that if this was granted, other people would want variances for similar reasons. He said he thought the Code anticipated that concern. He said it provides that other non-conforming uses can not be used as grounds for a variance. He said this is the fifth element. He said this request is not based on any other variances this Board has granted; it is based on the unique configuration of the lot. It is a fact that the design of the home, the circumstances surrounding the issuance of the building permit and that construction was permitted by all parties, to continue on the home until after the 14th inspection when it was discovered [all contributed to justifications to grant the variance]. It was not hidden; it just got by everybody. The home was almost completely built; the exterior was completely built before it was discovered.

6. **Spirit of the ordinance**—He discussed whether or not the variance would observe the spirit of the Ordinance and again do substantial justice. He said when they talk about the spirit of the Ordinance; generally speaking there are very few roads in Pittsfield Township that are caught by the supplemental [chapter of the] Ordinance. He said the majority of the homes in Pittsfield Township do conform to the 50 foot setback. Any unusual characteristics of the front elevations would be shielded by the extensive landscaping that the Niculceas have developed and are willing to put in as a condition of this variance request, to shield the appearance of the variance. There is no problem with the remainder of the structure; it is in complete compliance. "I hope members of the Board would realize it is a lovely home that would be a credit to the community. Substantial justice will be granted should this board grant the variance to avoid a very undue hardship to my clients and at the same time there will be no harm to any surrounding property. The only property similar to this that is close to it is adjacent. It is my clients' property which they reside in. To the north is a subdivision that has an existing demarcation that will be supplemented with a line of trees along its northern boundary." He said for these reasons, we feel all six (6) requirements of your code have been met by our proposal.

He said he appreciated Mr. Walter's writing a memo to the Board [ZBA], after a series of meetings, addressing the situation. He said he also appreciated and agreed with the conclusions of law, by the Township attorney. He said a small point in the letter stated the Niculceas moved their home forward after the plans. He said this is not the case; the home was moved, but it was moved to the rear because Mr. Niculcea elected to cut off the overhangs in the original drawing so he could move the home further back to take advantage of having a home as far back on the lot as possible, to avoid road noise and other reasons. He said the Chairman [Naik] raised a couple of concerns; one being a stairway. He said this was a building code situation, it was a safety situation and felt it

did not apply to this situation. He said the ZBA was established by the Township for this very type of situation: to address request for variances from the strict interpretation of the Ordinance, if the six factors set forth in the Code were met. He asked the ZBA members to accept their request with the condition of the extensive landscaping plan presented. He said this was a misunderstanding on both sides, in this situation.

Member Ward thought it was odd that on the original request there was a drain field plan that was later changed. He said he could not get clear answers why the drainfield drawing was changed. He asked why the drainfield changed.

Mr. Leavitt stated it was the County Health Board. It was to save the evergreens that currently front Maple Road.

Member Ward said the issue is the roots that would encroach into the drainfield.

Mr. Niculcea said to locate the future drainfield for 20 years from now.

Member Ward said, "you employed a surveyor, a licensed surveyor by the State of Michigan and it is their job to know these things and they did make adjustments as part of the drainfield survey. This was made clear at the September meeting and trying to understand."

Mr. Niculcea showed a drawing and explained the drainfield (staying approximately the same) and future drainfield.

Member Ward said he reviewed the original and revised drawing and said the fields appeared in the same location.

Chairperson Naik invited any other comments.

There were none.

Chairperson Naik asked if any one was opposed to this.

James Frego, of 2349 Windmill Way, property adjacent to the property in question; [the backyard area] said he also spoke at the September 24th (2007) meeting, in opposition to the variance request. He said he could not speak to the Township about safety, but felt there are three (3) important factors that are relevant and whether there was a good faith mistake. He said that from the September 24th [2007] meeting, part of the problem was the use of unlicensed contractors by the applicant. He said the mistake was made or allowed to continue to be made, as a result of the unlicensed contractors. Another factor is the cost of strict compliance with the Zoning Ordinance. He said 12-foot conifers do not come cheap. He related that some neighbors have put in a series of similar-sized evergreens on the back side of their lot that cost about \$20,000. He said in speaking of the cost of the strict compliance of zoning, in a letter of October 12th [2007], the estimated cost of corrective measures was about \$60,000. He said tonight it was said the

cost of corrective measures will be \$100,000. He said one letter with a cost estimate for a single family car garage of \$49,500. He said the \$49,000 is close to \$60,000 but closer to \$50,000. He said if you used the \$49,000 to \$60,000 in Mr. Leavitt's and the applicant's own materials, we are looking at \$20,000 worth of landscaping materials. He said he did not think there is a substantial difference between the Township saying "we would like you to actually do what our Ordinances require" versus what they are saying they can afford to do. He said there is a hint of litigation in both the Mr. Walter letter of Oct 12th and in the memo Supervisor Walter sent to the Appeals Board [ZBA], dated December 6th. He read paragraph 2, "although I do not necessarily agree with all the allegations by Mr. Niculcea, in his appeal based on new evidence presented but there is sufficient dispute in this case to merit to avoid litigation." He said this seemed more to avoid litigation cost rather than doing what this Board recommended in September. He said finally, cases that were cited by the Leavitt firm, a Pittsfield Township case and the Brummel case; both cases dealt with what is called "injunctive relief", where you are trying to stop someone from doing something that they are doing already. He said the general rule is, and the Township attorney said, that the Township is entitled to enforce its own zoning regulations; that is what is called "estoppel relief". He said both are very different terms of law. He said that in two cases that were cited, he said in the Pittsfield case that was about trying to stop a dog kennel from operating which had been operating for nine (9) months.

Chairperson Naik stopped and questioned Mr. Frego if he was an attorney/lawyer.

Mr. Frego replied yes.

Chairperson Naik asked if Mr. Frego would provide only new information.

Mr. Frego continued by saying he felt the two cases cited are relevant to what the Board should consider. He said the third factor of the five, whether permitting the residents to remain in the present location negatively impacts the neighboring properties. He said he believed it does, it is a very large variation from what is already existing in the area. He said there is the precedential effect because north and south of this property are several properties that could be prime for new building. He said if you allow this building to be that close to the road, it is going to make it difficult to not allow [a similar encroachment] later. He said there are properties to the north and south that are for sale and could merit new construction; "you could have similar problems in years to come." Finally, if the real reason is to avoid litigation; that it should be something that the Board reverses in a unanimous decision. He said if they have the money to litigate and landscape they should have the money to do what the Township wants them to do in compliance with the Zoning Ordinance. "I do not see what is the difference between the cost to litigate and the cost to landscape." He encouraged the Board to decline again.

Tom Jensen, living at the [southwest] corner of Maple and Windmill Way, just north where the house is, said he was not an attorney or surveyor. He said that when he saw the walls go up on Maple, he knew this "thing" [house] was close to the road. He said he has listened to some of the things discussed and that they do not have an effect on the

local properties. He said he is a realtor. He said the house is massive, he did not have a problem with massive. He said the problem that it is breaking the Code. He said they are here to enforce that. He said, "there are things we have to abide by as realtors." He said, "you guys are the Commission that watches over things that builders, contractors do. I have been called in because of things I have added to my house and had to meet certain requirements, at an expense." He said he never went out and infringed upon Maple Road. He said it was mentioned that the extension of the property towards Maple Road won't have an effect, even if the Road Commission comes through and widens it. He said he was not in favor of it. He said from his house he sees both sides of that, on the side of the area were talking about, when you come through that driveway, not only does the light come past the Wadleys' house [2253 Windmill Way] across the street, but go into their kitchen and go into their family room. He said that if that thing was to be removed or at least structured in such a way to eliminate that problem, he thinks some of the problems would be eliminated. He said it was right to deny the first time. As the neighbor to the north, he is in constant touch with the Wadleys and they are not happy with it.

Chairperson Naik asked Mr. Jensen his location in relation to this house.

Mr. Jensen replied on the corner of Maple and Windmill Way.

Chairperson Naik asked Mr. Jensen if he remembered what his setbacks were when his house was built.

Mr. Jensen replied his house was built by students and he did not know.

Chairperson Naik questioned Director Fowler concerning the setback on Maple Road.

Director Fowler replied that along Maple Road there is a major road setback of 110 feet from the centerline all the way up. He said the other setback is the front but what dictates in this case is the 110 [foot] setback regardless of the zoning district.

Mr. Jensen said he was surprised, and "not saying whose fault it was, whether the inspectors, the contractor or the owners, but it is a pretty commonly known fact in the industry that if you have a major road, the setback is more than just the standard; you have to allow for it."

Member Brostrom asked if the drive-through is the part that infringes into the setback and whether it has a living area and what were those spaces.

Mr. Niculcea explained.

Chairperson Naik asked if there were any more questions.

Mr. Leavitt said the cost of \$49,000, was the present cost of the existing structure, adding demolition estimated at \$10,000 to \$12,000 plus the cost to reconstruct. He said as for the cost of the evergreens, which my client has available, at \$500 each. He said of the

people who spoke in opposition, the location of their homes speaks tons. He has heard little of the effect on their homes. As for the threat of litigation, we have had four or five meetings with the Township to avoid litigation from day one.

Motion by Member Ward, supported by Member Brostrom, to close the Public Hearing.

MOTION CARRIED

Chairperson Naik said there should be discussion, given the new information. He said he felt they should discuss whether or not the problem is self-created and whether there collusion or a deliberate attempt to hide facts from the Board.

Member Ward said the applicant proposed conifers of at least 10 feet. He asked about diseased conifers and said that the Planning Commission requires a maintenance agreement to be sure the trees were maintained. He said he was not sure how that can be done. He asked for suggestions.

Director Fowler said the Township could enter into a maintenance agreement to be sure the trees are maintained or in healthy conditions.

Member Ward said he would like 10 years to guarantee the trees will survive.

Member Mahn commented that she has some background in gardening and that the Colorado spruce are failing more and more in this area and are on the "not-to-plant list" and are not reliable in this area. She said she would like to suggest white spruce or Norway spruce to get more longevity.

Member Ward said they could condition to say provide two kinds [of trees].

Member Mahn also said the Austrian pines are failing miserably. She said she felt strongly about this and expressed concern to the applicant and the cost of landscaping.

Member Ward said they [ZBA] could put the burden on staff.

Director Fowler said the Township has consultants that could be used.

Member Mahn said she would also suggest contacting Michigan State.

Motion by Member Ward, supported by Member Stagg, to grant the variance ZBA 07-05 Moise Niculcea with the following conditions:

- 1. Compliance with the site plan presented at the January 28, 2008 meeting;**
- 2. All new conifers be at least 10 feet in height, at least two varieties, and be approved by Staff;**

3. That the applicant enter into a maintenance agreement with Pittsfield Charter Township for maintenance and/or replacement of the landscaping for a period of 10 years.

Discussion:

Chairperson Naik stated one point in the motion asked for existing trees to be pointed out.

Mr. Niculcea said they were planted about three years ago on the south and north. He said they could fill the gaps and stagger them.

Member Ward suggested staff does a site visit within the next few days to establish what planting are existing.

Director Fowler agreed the request was acceptable.

Mr. Leavitt speaking to Mr. Niculcea, said he [Mr. Niculcea] will meet with staff to review.

Mr. Niculcea agreed.

Member Stagg said that that the building inspector works for the Township, and he said everything seemed to be going fine. She said she didn't realize the location clouded the issue. She said the [Washtenaw County] Road Commission said safety was not an issue. She said there is new evidence that is not real clear about the 50-foot setback. She said there is additional landscaping and the Supervisor requested looking into this further and he requested the ZBA to reversal of their decision.

Member Brostrom said he had nothing [else] and to go through the findings.

Chairperson Naik reviewed the findings.

1. That strict compliance with the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity with such regulations unnecessarily burdensome.

Discussion:

Chairperson Naik said the fact is the applicant has decided to build a house of such and such a size and drove that decision. He said, "not ignoring but not thinking about it." He said they now have a situation that it has become burdensome because the house is already built. He said, "if everything was planned properly everything would have been right."

Member Brostrom said he has driven Maple Road and agreed the house is huge and its massiveness bothers him. He said that the arguments against the house have been largely aesthetic. He said the petitioner has made a good faith effort to address the aesthetic issue with the landscaping. He said the other thing that bothered him was a mistake at some point and the Township is party to it. He said it is burdensome because the Township did not catch it sooner, and he is inclined to a compromise that will more or less satisfy everyone.

Member Ward said from a planning prospective, the house does not fit in with the neighborhood. He said the first item being necessarily burdensome. He said looking at additional factors presented from Bruce Laidlaw that they can consider the following factors:

1.--**Whether there was a good faith mistake**--He said this doesn't apply.

2--**The cost of strict compliance with the zoning ordinance**--He said everyone agrees it is a minimum of \$50,000 that was presented previously; an additional \$10,000 was presented previously, the \$60,000 was presented back in September. He said the additional cost of rebuilding has not been presented. He said the cost is above and beyond \$60,000. He could not say if this was a burden to this applicant; it could be to others.

3--**The time that elapsed from when the Township could have first discovered the setback problem**--He agreed there was an extreme length of time and that Mr. Yoder [building inspector] inspected 13 times; at the 14th inspection by Mr. Weiland caught the error. He said he would stress that the Township should work with the building department to prevent that situation from occurring again.

4--**Whether permitting the residence to remain at its present location will negatively impact neighboring properties**--He said no one said their property values were reduced and it is a bit of an eyesore, unfortunately. It would be burdensome for the applicant, considering everything.

5--**Whether there are safety issues in permitting the residence to remain at its present location**—He said there do not appear to be any safety issues.

He said that in this case it would be burdensome to the applicant to conform.

Chairperson Naik polled the members.

Member Stagg agreed.

Member Mahn agreed.

Member Ward agreed.

Member Brostrom agreed.

Chairperson Naik said he disagreed.

2. That the granting of a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners.

Discussion:

Member Stagg said the neighbors were very concerned with the largeness of the house and with how the house related to the back property line. She said they [the ZBA] were not concerned with the back property lines. She said this is about the front property line. She said there would be substantial justice to the neighbors.

Member Mahn said this would do substantial justice to the applicant. She said she wondered if it would for the other property owners. She said it would grant the applicant a tremendous amount of justice, but she was not sure about what it would do for the other property owners. She said she half agreed; half disagreed.

Member Ward said he would have to agree and disagree. He said it would given the facts tonight and from Mr. Laidlaw's memo it would do substantial justice to the applicant but he is not convinced it would give substantial justice to the other neighbors. He said he would agree with the finding more than half.

Chairperson Naik said it would depend on how you define substantial justice. He said the applicant would be given substantial justice if you take into consideration that the Township played a role, unknowingly, by letting it go as long as it did. He said as for doing substantial justice to the property owner, other than aesthetics, it really does not make any difference. He said it was pointed out that this is the front setback and not the back setback. He said "half and half."

Member Brostrom said he was 51-49 but he is going to say yes for substantial justice to him [the applicant].

Member Stagg said this would do substantial justice to the neighbors as it could be interpreted the board is considering the plight of the applicant and they would also consider other plights of neighbors. She said this plight was partially caused by the Township. She said she could see this doing substantial justice to the property owner. She said the house will be closer to the road than it should be, but this has been a process along the way. She said this does substantial justice to the owner overrides. She said "yes."

3. That the plight of the applicant is due to unique circumstances of the property and not to general conditions in the area.

Discussion:

Chairperson Naik said he did not think this is the case. He said the applicant could have built a house that was smaller or not have the garage in the setback. He said there is nothing unique to the property.

Member Brostrom agreed [the applicant] could have built a smaller house and stayed outside of the setbacks. He said the site plan was approved but there was a long period of time before the error was discovered. He said they testified they moved the house as far back as they could on the lot and had not realized they infringed on the front setback. He said the shape of the lot did play some role. He said there are some unique circumstances that were compounded by the Township.

Member Mahn said she will hold to the original decision that yes this property is unique but with alternative planning could have eliminated the problem. She said this would be a "no."

Member Ward said he felt this was 75/25 percent; with 75 percent "no" because the lot is irregularly shaped it is still 1.31 acres. He said a beautiful home with the same or similar architectural features could have been designed and constructed on this lot. He said given the architecture of the home it almost looks like a colonial but if additional living space was required a second story could have been added. He said "25% yes" and going back to some of the factors Mr. Laidlaw outlined and the Township approved the plan. He said "no, it is the unique circumstances of the home and not of the property."

Member Stagg agreed a house could have been built to conform with all of the Ordinances but unique circumstances were created because the building was approved and inspected a number of times and still approved and that creates the unique circumstances. She said "yes."

4. That the plight or problem is not self-created.

Discussion:

Member Ward said this was 50-50 and that reason for that there is a burden on the Township and Mr. Yoder's 13 inspections. He said he urged the Township, Human Resources and the Building Department to ensure that staff is adequately trained. He said the applicant hired a professional surveyor, licensed by the State of Michigan, and it is that gentleman's job to know what these setbacks are and where those lines are and they should know where to place the house.

Member Stagg said she felt the applicant acted on good faith and went through the channels he was suppose to go through. She agreed this was not self-created.

Member Brostrom said he agreed this was not self-created. He said he had not seen evidence of collusion on the plaintiff's side. He said it was possible a clerk could have put the 50-foot setback on the plan. He said he would put more blame on the Township than the applicant. He said he believed the Township had a responsibility to catch the error. He said he agreed.

Chairperson Naik said this was self-created, and the Township contributed to the problem. He said there is no evidence of collusion or hiding [anything] they have been very open about it. He agreed it is 50-50.

Member Mahn agreed 50-50. She said she believed the applicant is responsible for placing a large house on that lot. She said she felt the applicant did received erroneous information and there is responsibility on both sides.

5. That no non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Discussion:

Member Mahn asked what kind of precedent would this set; second guessing our original decision. She asked if it was because of new information that this could be done. She said in general no other issues were considered. She asked if this would set a precedent in the future for other people to say you did this before.

Chairperson Naik said he was hoping this is a safeguard for the future.

Member Mahn said “no, we did not [set a precedent].”

Chairperson Naik said, “this is very clear; we did not.”

Member Brostrom said, “we did not.”

Member Ward said he agreed; they did not consider other non-conforming uses.

Member Stagg said she agreed.

Chairperson Naik said he agreed; we did not.

6. That the variance observes the spirit of the Ordinance, secures public safety, and does substantial justice.

Discussion:

Member Ward said he was not sure this observed the spirit of the Ordinance. He said there is ample evidence that it does secure public safety, there are enough facts present that there is no impact to public safety. He said it does substantial justice to the applicant but he is not sure it will do substantial justice to the other property owners. He said he is split half and half.

Member Stagg said it does not observe the spirit of the Ordinance since this case has many issues added to it. She said she cannot say one way or the other. She said public safety is not an issue. She said it does substantial justice to the applicant. She said the applicant has worked with the Township to compromise to apply the spirit of the Ordinance. She said, in this case, she would agree because of the unique circumstances of the case.

Chairperson Naik said this does not observe the spirit of the Ordinance, and with respect to secure public safety it does not enhance, it just will not be a problem. As for substantial justice right from the beginning, the Township provided erroneous information or compounded it. He said this does substantial justice to the applicant. He said he is 1/3 agreed and 2/3 not agreed.

Member Mahn said this does not truly observe the spirit of the Ordinance, but the applicant has worked with the Township, trying to comply. She said there are extenuating circumstances that have clouded the issue. She said the Road Commission seems to be a non-issue. She said she was “no” on the spirit. She said she agreed half and half.

Member Brostrom said he does not disagree in principle with what has been said but has been thinking of the future of Maple Road; and think it is true the Road Commission will not widen [the road] in the near future. He said he did not think there will be any tremendous growth in the area, since the area is fairly built out, already. He said there is no question on public safety and that substantial justice is to the plaintiff; yes. He said this is not in the spirit the Ordinance but not enough to vote no.

Member Ward asked staff if the conditions are adequate and enforceable.

Director Fowler said they were.

Roll call:

YES: BROSTROM, MAHN, WARD, NAIK, STAGG
NO: NONE
ABSENT: NONE
ABSTAIN: NONE

MOTION CARRIED (Passed)

Chairperson Naik asked the applicant to work with staff.

Mr. Niculcea agreed that he would.

Item 5.0 moved to follow.

Member Ward asked Chairperson Naik about continuing with remaining the chair.

Member Stagg nominated Member Naik for chairperson.

Chairperson Naik said he accepts with one condition, that in 2009 someone else is chair.

Member Ward nominated Member Mahn for Vice Chair.

Member Mahn accepted the nomination.

Member Ward to nominate Member Stagg for Secretary.

Member Stagg accepted the nomination.

APPROVED BY CONSENT

Chairperson Naik through December 2008.

Vice Chair Member Mahn.
Secretary Member Stagg.

7.0 New Business

7.1 ZBA 08-01 Carpenter Crossings, LLC
[submitted for a variance]

Item postponed until the February 25th [2008] meeting by the applicant per letter dated January 24, 2008. [See minutes book for copy]

8.0 Zoning Administrator's Report

Director Fowler said the registration for Citizen Planner, information has been provided. He said one person has responded and that the Township will cover the cost. He said registration closes tomorrow with the seminar being held, Wednesday, February 13th [2008].

9.0 Members' Report

None.

10.0 Secretary's Report

None.

11.0 Chairperson's Report

None.

12.0 Approval of Prior Minutes

12.1 Minutes of September 24, 2007

Motion by Member Brostrom, supported by Member Stagg, to approve the minutes of September 24, 2007, as amended.

MOTION CARRIED

12.2 Minutes of December 17, 2007

All agreed to postpone the December 17, 2007 minutes.

13.0 Adjournment

Chairperson Naik adjourned the meeting at 8:30 p.m.

s/Alayna Stagg, Secretary

May 19, 2008