

**GRATTAN TOWNSHIP ZONING BOARD OF APPEALS
Regular Meeting of August 17, 2011**

1. Call to Order

Chairman Pat Mooney called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

P. Mooney led the Pledge of Allegiance.

3. Roll Call

Members present: P. Mooney, A. Berry, J. Jakeway, G. Jonker, N. Benner, J. Vander Wiel and B. Johnson. Members absent: Dee Hockemeyer (excused). Township Supervisor Frank Force, Township Trustee Dennis Heffron and Township Zoning Administrator Gregg Converse also attended the meeting.

4. Approval of Agenda

N. Benner moved and A. Berry seconded to approve the agenda as presented. All ayes. The motion carried.

5. Approval of Minutes- October 20, 2010

A. Berry moved and J. Jakeway seconded to approve the minutes of the October 20, 2010 regular meeting as presented. All ayes. The motion carried.

6. Election of Officers

N. Benner nominated P. Mooney for Chairman. J. Jakeway seconded the nomination. P. Mooney agreed to accept the nomination. All ayes. The motion carried.

P. Mooney nominated N. Benner for Vice Chairman. A. Berry seconded the nomination. N. Benner accepted the nomination. All ayes. The motion carried.

P. Mooney nominated John Jakeway for Secretary. N. Benner seconded the nomination. J. Jakeway accepted the nomination. All ayes. The motion carried.

7. New Business-Heethuis Holdings Variance Request- 7496 Lessiter

Draft: 08/24/11

Approved: 09/21/11

~~Township Zoning Administrator Gregg Converse reviewed history of Mr. Heethuis' property. He said the Planning Commission previously approved former property owner Bill Reed's request for a private road off Lessiter Road to access lots, now owned by Jeffrey Marsh and Brian Heethuis. As part of that special land use, two barns on the Reed property were required to be torn down. G. Converse said the Reed property later went into foreclosure; the private road was never built and the barns were never torn down. The Marshes purchased the foreclosed Reed property and B. Heethuis later purchased land from Mr. Reed not included in the foreclosure. G. Converse said when B. Heethuis purchased that property the deed said there was an easement to the property off Lessiter thru the Marshes land. B. Heethuis asked for reinstatement of the Reed special land use, which lapsed when the road was not built. That request was considered by the Planning Commission and tabled at B. Heethuis' request. The Planning Commission then considered and approved B. Heethuis' special land use request to use the sewer pump station road to access his property and recommended approval to the Township Board. The Township Board approved the special lane use and forwarded the matter to the Zoning Board of Appeals for consideration of B. Heethuis' variance requests for a reduction in the road right of way and a reduction in the front yard setback requirements of 2 parcels adjacent to the sewer pump station road.~~

TOWNSHIP ZONING ADMINISTRATOR GREGG CONVERSE EXPLAINED TO THE BOARD THAT HEETHIUS HOLDING LLC WAS REQUESTING TWO SPECIFIC VARIANCES FOR REVIEW BY THE ZONING BOARD OF APPEALS. THESE ZONING VARIANCES ARE A CONDITION OF HIS SPECIAL LAND USE TO ESTABLISH A PRIVATE ROAD ACROSS TOWNSHIP PROPERTY TO ACCESS HIS RECENTLY PURCHASED PROPERTY.

THE FIRST VARIANCE IS FROM SECTION 3.25.E.1(a) TO REDUCE THE REQUIRED PRIVATE ROAD EASEMENT WIDTH OF 66 ' 0" DOWN TO 20' 0" TO UTILIZE THE EXISTING TOWNSHIP PROPERTY TO SERVE HIS PROPERTY AND THE EXISTING PROPERTY SERVICING THE SEWER PUMP STATION. THE SECOND VARIANCE IS FROM SECTION 3.07 TO REDUCE THE MINIMUM FRONT YARD SETBACK REQUIREMENTS FOR TWO CORNER LOTS THAT ABUT THE PRIVATE ROAD UNDER REVIEW. THESE LOTS ARE PARCEL NUMBERS 41-12-09-200-015 AND 41-12-10-103-001.

THE BOARD ALSO ASKED MR. CONVERSE TO GIVE A BRIEF HISTORY OF HOW THE PARCELS UNDER REVIEW WERE ORIGINALLY CREATED. MR. CONVERSE SAID THE PLANNING COMMISSION SEVERAL YEARS AGO HAD APPROVED A PRIVATE ROAD OFF LESSITER AVENUE NE TO PROVIDE ACCESS TO THREE OF MR. WILLIAM REED'S NEWLY CREATED LOTS. THIS PRIVATE ROAD WAS NEVER CONSTRUCTED AND THE SPECIAL LAND USE BECAME NULL

Draft: 08/24/11

Approved: 09/21/11

AND VOID. THREE OF THE FOUR LOTS WERE SOLD BY THE BANK IN FORECLOSURE PROCEEDINGS TO MR. MARSH AND THE FOURTH LOST WAS PURCHASED BY HEETHIUS HOLDINGS LLC DIRECTLY FROM MR. REED.

HEETHIUS HOLDINGS LLC THEN FILED AN APPLICATION FOR A NEW SPECIAL LAND USE TO CREATE A PRIVATE ROAD FROM LESSITER AVENUE NE ACROSS THE MARSH'S PROPERTY TO SERVE HIS PARCEL. DURING THE PROCESS OF THAT SLU REVIEW, HEETHIUS HOLDINGS LLC IDENTIFIED A POTENTIAL ALTERNATE ACCESS POINT UTILIZING THE TOWNSHIP OWNED PARCEL OFF WOODLAND PARK DRIVE. THE FIRST SPECIAL LAND USE WAS THEN TABLED BY THE PLANNING COMMISSION TO ALLOW HEETHIUS HOLDINGS LLC TO PURSUE THIS SECOND ALTERNATE ACCESS AS AN OPTION. THE PLANNING COMMISSION CONDITIONALLY APPROVED THIS SPECIAL LAND USE OPTION FOR A PRIVATE ROAD CONTINGENT UPON THE APPLICANT OBTAINING TWO VARIANCES AS DESCRIBED ABOVE.

A. Berry moved and N. Benner seconded to open the public hearing. All ayes. The motion carried.

Neil Blakeslee, attorney representing the Langlands, property owners immediately west of the sewer pump station access road, said B. Heethuis can access his property without obtaining any variances by using the granted legal easement off Lessiter. He said the enforcement of the requirement for the road right of way is not a hardship because the applicant can access his property using that granted easement. He said the most critical issue is that granting the variance would be a substantial detriment to adjacent properties. He said if approved, the variance would make the Langland's property non conforming. That limits the Langland's right to do certain things on the property without coming back to the Township for approval. Mr. Blakeslee said all 5 conditions must be met for approval of the variance and believed only one condition is met; no non conforming uses.

Mr. Blakeslee said the sewer pump station access road has a 14' road bed with an additional 3' on each side. He said snow removed from the road could not be put on neighbor's property and asked ZBA members to consider where snow will be put. Mr. Blakeslee read Supervisor Frank Force's comment from the June 20, 2011 minutes regarding restrictions created on the 2 lots adjacent to the sewer pump station road. Mr. Blakeslee said that sounds a lot like the taking of property owners rights.

Mr. Blakeslee said Fire Department Chief Lou Kirkbride has concerns about safety on the road and would like side areas along the 700' private road to allow for 2 vehicles to pass and a larger turnaround at the end of the private road. Mr.

Draft: 08/24/11

Approved: 09/21/11

Blakeslee said those are reasons why the 66' road right of way requirement is in place.

Mr. Blakeslee said the granting of a personal property right on township property, by easement, will set a terrible precedent.

He said Section 3.25R of the Zoning ordinance states private roads can only be used for residential or agricultural uses. He said use of the private road for the sewer pump station would not be allowed.

Jeffrey Marsh presented a depiction of his property showing the access easement to Mr. Heethuis' property. He said if access to the Heethuis property comes off Lessiter it will require a 996' private road thru his property and wetlands which are listed on the National Wetland inventory. Near the existing barns, drainage will have to be addressed. The grade in the wetland area will have to be reduced to 1% and will require a drain which will change the direction of the water onto his property. Mr. Marsh said the 66' road width will require removal of all the trees between his house and his neighbors house. Mr. Marsh said he will lose over 2 acres of land if the private road comes off Lessiter thru his property. He also said there will be safety issues entering and ~~existing~~ EXITING his property and traveling on the private road near the barns. Mr. Marsh said he tried to purchase the property now owned by Mr. Heethuis, but was unsuccessful.

D. Heffron said he was attending the meeting as a citizen. He said the Planning Commission and Township Board felt they had to grant Mr. Heethuis a road to access his property, but Mr. Heethuis does not have to have a road: he has an easement to access the property. He said granting the variance would set a bad precedent. He said he voted against this proposal when it came before the Planning Commission and the Township Board and continues to oppose the request.

Dan Lamoureux, neighbor adjacent to the sewer access road, said 15-20 large fifty year old trees along the sewer access road would be cut down if B. Heethuis' variance request is approved. He was concerned about an increase in water runoff from the road to his property.

Mike Jacobs, neighbor, said in the past, trucks accessing the sewer pump station have gotten stuck in clay when they are off the bed of the sewer road. He asked how many ZBA members had visited the site. All members said they had visited the site.

A. Berry moved and J. Jakeway seconded to close the public hearing. All ayes. The motion carried.

B. Heethuis said the road would serve 1 to 2 lots and complies with township ordinance. He is requesting a reduction in the right of way, not the road width.

Draft: 08/24/11

Approved: 09/21/11

He said if approved the road would be improved all the way down to the pump station and provide better access to the pump station. Road improvements would also take care of the clay issue. B. Heethuis said the road will be built to an engineered drawing and have drainage. He said a T shaped turnaround will be located at the pump station. B. Johnson asked if parcel 2 would have access to the private road. B. Heethuis said the proposed road would only access his parcel and the pump station, not parcel 2. J. Wander Wiel asked who would maintain the road. B. Heethuis said the land owner would be responsible for all road maintenance, snow removal, etc. He said the road maintenance requirement remains with the parcel.

P. Mooney said there are 2 variances to consider and suggested looking at the road width issue first. He said the road width is being considered as a dimensional variance. N. Benner said the sewer access road being considered is very narrow, would create a safety issue and be a tremendous burden to neighboring parcels. She said she would not consider a 46' road width variance. She also said approving an individual use of township owned property as an exclusive right would set a legal precedent that she is very uncomfortable with. She said this precedent could become a statewide issue.

A. Berry agreed with N. Benner. He also said the Fire Department's concern that there is not enough room for 2 fire trucks to pass on the sewer pump station road must be considered.

G. Jonker said the applicant knew what he was getting when he purchased the property and agreed that setting a precedent regarding use of township property was not a good idea.

B. Johnson said his main concerns were allowing an individual use of township property and forcing an easement upon adjacent property owners.

J. Jakeway said the applicant already has a 66' easement off Lessiter to his property .

J. Vander Weil said the applicant originally pursued using the existing easement and later was advised to consider the sewer access road. He said he believed if there were any safety issues or problems, the Planning Commission would not have approved use of the access road.

P. Mooney read section 18.06 standards regarding the variance in width of a private road.

A). The enforcement of the literal requirements of the Ordinance would involve practical difficulties.

Draft: 08/24/11

Approved: 09/21/11

A. Berry said there would be practical difficulties because fire equipment would have difficulties accessing the property and put fire trucks and citizens at risk. N. Benner agreed and said the applicant has an existing legal easement off Lessiter Road that meets all the requirements.

B). Special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.

P. Mooney said it all hinges on how Mr. Heethuis accesses his property. N. Benner said he has access to his RR parcel thru the easement off Lessiter.

P. Mooney said there are 2 possible routes to the Heethuis' property. N. Benner said Mr. Heethuis has the ability to access his property via an existing easement. B. Heethuis asked to speak at this point, and said he originally proposed using the sewer access road, but was turned down. He then pursued using the existing easement to his property and during consideration of that proposal was approached about using the sewer access road. He said he has worked with the township for 8 months on this issue and will get access one way or another.

C). Literal interpretation of the provision of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district.

P. Mooney said the applicant has other means of accessing the property.

D). The authorizing of such variance will not be of substantial detriment to other lands and uses and will not be contrary to the spirit and purpose of this Ordinance.

ZBA members said if approved this variance would force variances on two other properties.

J. Jakeway said Mr. Heethuis' property is not land locked due to the easement across the Marsh property. He just does not meet requirements to build on the property.

P. Mooney said authorizing the variance would be a detriment to neighbors if ~~easements~~ VARIANCES on their properties were granted.

P. Mooney requested that the ZBA should take a vote on the resolution to approve variances for private road and from minimum yard requirements for corner lots. He instructed ZBA members that a "Yes" vote on the resolution would approve the variance requests, and a "No" vote would deny them. Roll call vote: Ayes: J. Vander Weil. Nays: A. Berry, B. Johnson, J. Jakeway, G. Jonker, P. Mooney and N. Benner. The resolution was denied 1-6.

Draft: 08/24/11

Approved: 09/21/11

8. Next Meeting Date

The next meeting will be held on September 21, 2011 at 7:00 p.m.

9. Adjournment

There being no further business, J. Jakeway moved and N. Benner seconded to adjourn the meeting. The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

J. Jakeway, ZBA Secretary

Diane Timmons
Recording Secretary