

APPROVED

MEETING

GLEN ARBOR TOWNSHIP ZONING BOARD OF APPEALS

Thursday, May 19, 2022 at 1 pm

Glen Arbor Township Hall

PRESENT: Don Lewis, Bill Freeman, Denny Becker, Andy Dotterweich, Alternate Dan Semple, Zoning Administrator Tim Cypher, Recording Secretary Dana Boomer, Township Legal Counsel Tim Figura

ABSENT: Harvey Warburton

GUESTS: 5

CALL TO ORDER: Chairman Bill Freeman called the meeting to order at 1:00 p.m. with the Pledge of Allegiance.

APPROVAL OF AGENDA: Dotterweich moved, Becker seconded to approve the agenda as presented. All in favor, motion carried.

CONFLICT OF INTEREST: Mr. Lewis stated that he has been involved in previous ZBA requests on this matter, which is documented in the minutes of previous meetings. *There was consensus that there was no conflict of interest on Mr. Lewis' part.*

APPROVAL OF MINUTES: Lewis moved, Dotterweich seconded to approve the minutes of April 23, 2021 as presented. All in favor, motion carried.

PUBLIC COMMENT: None

ELECTION OF OFFICERS: The officers of the previous year are Bill Freeman as chair, Denny Becker as vice-chair, and Harvey Warburton as secretary. The ZBA discussed; Freeman thinks that it might be time to have someone else as Chair. Dotterweich moved, Lewis seconded to appoint Denny Becker as chairman. All in favor, motion carried. Freeman moved, Lewis seconded to appoint Andy Dotterweich as the vice-chairman. All in favor, motion carried. Dotterweich moved, Semple seconded to appoint Bill Freeman as secretary. All in favor, motion carried.

The public hearing was opened at 1:07 pm.

1. **ZBA Case #2022-01** - Richard V. and Julia A. Connell request a .75 acre (32,670 sq.ft.) variance from Zoning Ordinance Section IX.4, which states the minimum land per single-family dwelling with its accessory buildings shall be located on a legally described parcel of land of not less than one hundred thirty-one thousand (131,000) square feet (3 acres) of area. The property is zoned Agricultural; Tax ID 45-006-030-005-40. The parcel is located at 6335 S. Miller Hill Road, Maple City, MI, 49664, Section 30, T29N, R13W, Leelanau County, Michigan.
 - a. Presentation by Applicant – Marc McKeller presented as the attorney for the applicant. He has been working with the Connells on this property for approximately a year. He summarized the history of the property. The Connells also submitted a letter regarding the history of Julie (Esch) Connell's family in the area and the history of the property, which will be maintained on file. In

addition, Mr. McKellar submitted responses to the Staff Report, which will be maintained on file. Mr. McKellar states that the applicant wishes to build a single family home with appropriate outbuildings on the property – if this is not allowed, then the lot is completely unbuildable, and unusable. He feels that this would be a taking of property rights. This proposal is not inconsistent with the Master Plan, and only deviates from the Zoning Ordinance in that it is .75 acres smaller than the current zoning requirement. While the owners have negotiated with the Park Service to sell the land, they turned down the most recent offer, and have no duty to sell to the Park.

Richard Connell spoke and stated that there is also an easement out to Cheney Road, which would be the main access to the property in the winter, and if this easement is counted it makes the property almost 3 acres. He stated there should be no concerns with density, given the surrounding park land, the proposal, and the land he owns on the other side of Miller Hill Rd.

b. ZBA Questions/Discussion with Applicant – Dotterweich asked what has changed since 1999. McKellar stated that the previous decisions are not binding on the current decision; however, the analysis is different behind the request, and the legal criteria is now better advocated. The character of the township has also changed in the last 23 years, with larger houses, less agriculture, and the Park acquiring more parcels. The decision that was made in 1999 was, in his opinion, made on an incorrect basis, without analyzing the characteristics of the standards. More information is being presented here, and this request needs to be analyzed on its own. Dotterweich asked if the property could be used for other uses, other than residential or agriculture? This was discussed between the ZBA, staff, and applicant – nothing was determined. The applicant and ZBA also discussed the survey of the property, and whether the creation of the lot is relevant to the discussion. The ZBA and McKellar discussed the relevance of the history of the lot to the discussion today.

The ZBA, staff, and McKellar then returned to a discussion of potential uses for the property without a variance. McKellar argued that there are commercial-type operations (riding stables, cemeteries, etc) that could be placed on this property, however the applicant does not wish to put something of that sort on the land, because it would ruin the view and the property. The ZBA and applicant then returned to a discussion of the history and creation of the property, and the relevance of that to the discussion today.

Freeman asked if the frontage requirements are met; they are, with 200' required and 240' present.

c. Public Comment (limited to two minutes per person unless extended by ZBA) – A letter was submitted from William & Bridgit Partalis, neighbors, in support of the variance and development of a single-family home on the property.

Tom Ulrich – Deputy Supervisor of the Sleeping Bear Dunes National Lakeshore – The National Park Service remains strongly opposed to the variance, and as the surrounding property owner they feel that this request would be incongruent with the current character of the

neighborhood. While they have sympathy for the applicant, they do not believe this application should be approved. The purchasers of the other two non-conforming lots in this area took the opportunity to return their land to the previous owner for the purchase price; the applicant did not. The open space value of this area has become even more precious since the last application. The Park has offered to purchase the property for fair market value. The Park Service also submitted a letter to the township supporting this statement.

d. Applicant's Response to Public Comment – Mr. McKellar stated that it would be a taking of property rights to force this land to remain open space.

e. ZBA Discussion with Staff (if required) – Cypher stated that the assessor is available by phone if there are specific questions for him. He also introduced Tim Figura with Figura Law, acting as the township's legal counsel. Cypher reiterated the three pieces of correspondence – letters from Julie (Esch) Connell and William & Bridgit Partalis supporting the application, and from the National Park Service opposing the variance.

Cypher reiterated that when the property was created, it did not meet the Township's Zoning Ordinance requirements. Even though a Tax ID number was given, that did not make it a legal lot. There were administrative remedies available throughout the history of the property that were not pursued, including requesting a rezoning by the township or moving the issue to Circuit Court. Dotterweich mentioned the request by the previous owner to rezone to R2; this was denied but it was recommended that a request be made to rezone to R4 but this was never done.

Dotterweich asked about the history with the Park Service. McKellar responded that negotiations have been ongoing with the Park since the 1999 meeting, but that his clients have refused the offers presented. Mr. Connell covered the history with the Park Service; permission was granted to the Park Service to appraise the property in 2021.

f. ZBA Deliberation/Findings of Fact

1. **The strict application of the provisions of this Ordinance would result in practical difficulties which relate only to the property for which the variance is sought.** - The ZBA discussed and had consensus that the conditions described here would apply to all properties of less than three acres in the Agriculture-zoned district. Therefore, these do not relate only to the property for which the variance is sought.
 - a. **The practical difficulties shall prevent the carrying out the strict letter of the Ordinance** – This relates to Point 1. However, anyone with a lot size smaller than that allowed by the Ordinance would have the same issue, and there are other uses for the property. This property was created after the Ordinance was created, and therefore this is a self-created difficulty.
 - b. **The practical difficulties are related to the physical characteristics of the property and not economics** – Dotterweich believes that this is a self-created difficulty with economic elements, because the buyer purchased only one lot that was too small to be built on.

Other ZBA members disagreed, stating that the main issue here is that the current property is too small, which is a physical characteristic. Dotterweich stated that this was not a recorded lot of record that existed prior to the creation of the Zoning Ordinance, and so *it was not* grandfathered; it was created in its current size in violation of the Zoning Ordinance at the time of creation. Lewis stated that this is a specific question regarding whether economics have anything to do with the variance request – he feels that economics do not have anything to do with the variance request, as the applicant has made no appeal based on economics. Becker feels that this is primarily a physical difficulty, not an economic difficulty; Freeman feels that this request does not relate to economic difficulty.

- c. **The practical difficulties shall consist of extraordinary physical conditions such as shallowness, slope or topography of the property involved, or to the intended use of the property, or uses in the same zoning district.** – Dotterweich sees nothing different between this property and any other agricultural property of less than 3 acres; the remainder of the ZBA agreed.
2. **Granting the variance will not be contrary to the public interest or to the intent of this Ordinance.** – Dotterweich stated that the National Park Service has made the argument that granting the request would not be in the best public interest. In addition, the Township created a Zoning Ordinance to codify public policy at the time – this lot was created after the Zoning Ordinance was put in place. Dotterweich believes that this would be contrary to the public interest and to the intent of the Ordinance. The intent of the creation of the Park was not to have homes in this area. Becker stated that while the Park is important, the Township's Ordinance needs to be taken seriously. Lewis stated that to his knowledge there has never been a variance granted for a non-conforming lot that was created after the implementation of the Zoning Ordinance. Building on lots of this size was not the intent of the ordinance. The ZBA had consensus that this standard is not met.
3. **Granting the variance shall not have the effect of permitting the establishment within a district of any use which is not permitted by right within the zoning district.** – The ZBA had consensus that this standard is met, as a single-family residence is a use by right in this zoning district.
4. **Granting the variance will not cause a substantial adverse effect upon property values in the immediate vicinity of the request.** – Lewis stated that this property is in the middle of the Park, so this would have no effect on property values. Dotterweich stated that the Park has stated that granting the variance would have a detrimental effect on the Park, but not necessarily on property values. The ZBA found this standard to be not applicable, as property values would not be affected.
5. **Granting a variance is necessary for the preservation of substantial property rights possessed by other properties in the same zoning district.** – Dotterweich stated that there was no testimony that the denial of this variance would affect other properties in the Agricultural zoning district. The ZBA had consensus that this variance would have no effect on other properties in the zoning district, other than to possibly set a precedent.
6. **Granting the variance will observe the spirit of this Ordinance.** – Lewis restated his position that the granting of this variance would not observe the spirit or intent of the Ordinance. Dotterweich agreed, and the consensus of the ZBA was that this standard was not met.

Becker asked if the applicant's legal counsel had a comment. McKellar made brief comments on point one, stating that the first portion is a modifier, which doesn't need a met or not met determination.

The ZBA had consensus that the discussion in the findings is the basis for the final decision vote.

Motion on the Request – Board Discussion – The board discussed the request as a whole.

Dotterweich moved to approve the Connell dimensional variance request #2022-01 as presented in the application due to the findings of fact as discussed during this Public Hearing. Semple seconded. Dotterweich stated that while he moved for approval to open the question for discussion, he does not see a reason to grant the variance, for a number of reasons. This application does not follow the intent and spirit of the Ordinance that was in effect prior to the creation of the lot; it will create an adverse effect on the surrounding property owners (the National Park); this matter was denied in the past and he does not feel there is sufficient new information to overturn these decisions; and granting this request would be contrary to the public interest and intent of the Ordinance. Semple feels that a request for re-zoning may be more appropriate based on the characteristics of the request; but that is beyond the bounds of the ZBA discussion.

Dotterweich asked if he was allowed or required to vote today due to his membership on the Planning Commission, based on the possibility of a conditional rezoning request. Figura stated that he should vote today, but would not be able to vote if the ZBA was considering an appeal of a PC decision.

Call the Question – A roll call vote was taken. **In favor: None; Opposed: Andy Dotterweich, Bill Freeman, Don Lewis, Dan Semple, Denny Becker. Motion failed.**

The public hearing was closed at 2:45 pm.

OTHER BUSINESS: None

PUBLIC COMMENT: None.

ZBA COMMENT: None.

ADJOURNMENT: With no further business, Becker declared the meeting was adjourned at 2:46 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary