

**ANN ARBOR CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
APRIL 19, 2006, 3:00 PM**

**I. ROLL CALL**

The meeting of the Ann Arbor Charter Township Zoning Board of Appeals was called to order by Chair Mitchell at 3:00 p.m. at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, 48105.

Present: Chair Richard Mitchell, Clerk Rena Basch, Douglas Price, William Dutil

Absent: Larry Burgess

Also Present: Township Attorney Sandra Sorini Elser, Township Supervisor Michael Moran, Building Inspector and Zoning Official Gary Dresselhouse

**II. APPROVAL OF MINUTES**

Price moved approval of Zoning Board of Appeals minutes from last meeting (March 15, 2006) with one correction; Dutil seconded. Motion passed unanimously.

**III. OLD BUSINESS**

A. **ZBA-1-06** – Request by Whitmore Lake/23 LLC for variances on Parcel 09-08-100-001 zoned A-1 and Parcel 09-08-400-001 zoned R-2, vacant properties located on Whitmore Lake Road, south of Warren Road. Petitioner requests R3-A residential zoning to develop residential subdivision with 22,000 ft<sup>2</sup> lots, 164 homes. Matter was tabled at March 15, 2006 at petitioner’s request in order to submit additional reports.

1) Petitioner presentations

Ed Kickham gave a brief presentation saying the petitioner is submitting for a series of dimensional variances and claiming the petitioner is faced with peculiar difficulties on this site. The developer proposes to install a community well and package sanitary sewage treatment plant. He claimed that if the dimensional variances are not granted the parcel can only be developed with ~ 40 homes which is not worth the cost to install the community treatment plant, hence the request to develop 164 homes.

James Gailbrath introduced himself as one of the members of the Whitmore Lake LLC, which holds a purchase agreement with the property owner, Dr. Youssef. Mr. Gailbrath said he has 30 years experience in development, and feels this parcel is ideal for “transitional use.” Whitmore Lake LLC had Atwell Hicks investigate the site and prepare a site plan for their own purposes; this study determined that 164 ½ acre lots would work. They want to develop \$500,000 to \$600,000 homes of ~ 3200 ft<sup>2</sup>. Mr. Gailbrath said he has a lot of experience developing private wastewater treatment plants.

Ed Kickham claims to have demonstrated the difficulty particular to this site, and believes the Planning Commission and Board erred when they refused the rezoning request for R3A, but the Courts have said the petitioner must appear before the ZBA. Mr.

Kickham asked that the ZBA grant the requested variances “conditionally.” He said the petitioner is willing to accept two conditions as part of the variance request. These conditions would be: 1) limit the development to 164 sites, and 2) developer to pay for signalization at M14 ramps to address present inadequacies.

2) Zoning Official’s report

Gary Dresselhouse said the ZBA should not be hearing this petition for lack of jurisdiction. (Sec 24.11D)

3) Board comments and discussion

Supervisor Moran said the Township has been working on a private wastewater treatment system (PWS) ordinance and has learned a lot about those systems. He asked why the petitioner was not considering Advantex or similar type systems which support ~35 homes for a reasonable cost. Petitioner claimed to have no knowledge of Advantex or smaller PWS systems in spite of the fact that their engineering firm Atwell Hicks is strongly encouraging their use throughout the County.

Supervisor Moran pointed out that offering conditions as part of a variance request is not valid.

Board asked petitioner what made this site different from other parcels in the area that are similarly zoned. Petitioner claimed this site does not perk in many locations, but admitted that they only studied this site so they could not say if it was any different from the rest of the area.

Supervisor Moran asked Petitioner what was the minimum variance that would be required to support a private wastewater system. Petitioner admitted that they had not determined that and did not know. Moran asked what was the cost of a private wastewater system to support the currently permitted density. Petitioner stated that they did not know.

Board discussed that this was a “use variance” and not a dimensional variance, as indicated in the petitioner’s own words the series of dimension variances amounts to a rezoning.

Board discussed petitioner’s offer to provide M14/Whitmore Lake signalization. ~~is interesting, but MDOT warrants are not there yet so the offer is meaningless. The offer proved to be premature since the petitioner could not report that a sufficient number of warrants were in place to satisfy the requirements of MDOT for signal approval.~~

Board asked why the developer thought this parcel was “ideal for transitional use” and how 164 homes could be considered a transitional use.

4) **Public hearing** – Chairman Mitchell opened the public hearing at 3:26 pm.

Cheryl Mackrell, 120 Underdown, Barton Hills Board – Showed results of Barton Hills aquifer study done in 1995. Petitioner is proposing to put a new community well and a package sewage treatment plant right on top of their aquifer. Ms. Mackrell requested that the Board please stick to the Master Plan which has been working well. She is also concerned about the high failure rate of package plants and the tendency of developers to neglect them.

5) Zoning Board of Appeals discussion

Township Attorney Sorini read the June 2003 zoning ordinance amendment which states that the ZBA cannot grant a use variance. She pointed out that Mr. Kickham’s cover letter to the ZBA basically spells out a use variance and essentially asks for rezoning not dimensional variances. Mr. Kickham said the Grebo vs. McCormick Township case suggests that the ZBA does have authority to grant use variances, but Ms. Sorini disagreed saying that is not what the Grebo case says.

ZBA members discussed their opinions. There was general consensus that the Board lacked jurisdiction to grant a use variance and that a use variance, not dimensional variances, was what was being requested by the petitioner.

**Mr. Dutil moved to deny the application because it is for a use variance. Section 130.2404 of the Township Zoning ordinance provides there is no authority to grant a use variance, and he finds there is no jurisdiction based on that ordinance and moved to deny for lack of jurisdiction. Mr. Price seconded the motion. Motion passed unanimously.**

**IV. NEW BUSINESS - none**

**V. PUBLIC COMMENT** – Chairman Mitchell asked if anyone else had public comment, but there was none.

**VI. ADJOURNMENT** – **Mr. Dutil moved to adjourn at 3:40 pm. Mr. Price seconded.**

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Rena Basch, Clerk