

**ADA TOWNSHIP ZONING BOARD OF APPEALS  
MINUTES OF THE TUESDAY, DECEMBER 1, 2020, REGULAR MEETING**

A regular meeting of the Ada Township Zoning Board of Appeals was held on Tuesday, December 1, 2020, at 4:30 p.m. The meeting was held by video/audio-conferencing, in conformance with the Michigan Governor's Executive Order.

**CALL TO ORDER**

The meeting was called to order by Chair Dixon at 4:30 p.m.

**ROLL CALL**

Members present: Burton, Dixon, McNamara, Nuttall, Smith

Members absent: 0

Staff Present: Buckley, Ferro, Suchy

Public: 10

**APPROVAL OF AGENDA**

Moved by Smith, supported by Burton, to approve the agenda as presented. Motion passed by roll call vote 5-0.

**APPROVAL OF MINUTES**

Moved by Nuttall, supported by McNamara, to approve the October 27, 2020 Special Meeting minutes as presented. Motion passed by roll call vote 5-0.

**UNFINISHED BUSINESS** – None.

**NEW BUSINESS**

- 1. Request for Variance from Private Road Standards to allow a new parcel to have access to a private road (Baer Dr.) which does not meet roadway width, easement width, or grade standards and does not have a recorded maintenance agreement, 201 Honey Creek Ave. NE, Ryan LaHaie for Emily Dietrich**

Dixon invited the applicant to present his request. Mr. LaHaie asked his attorney, Sara Lachman, to speak on his behalf. Ms. Lachman presented the request for variance and explained that Mr. LaHaie has a purchase agreement to acquire a newly created 2.5-acre lot at 201 Honey Creek and prefers to access the new lot from the pre-existing private road, Baer Drive, which currently does not meet private road standards, however, there are many other homeowners using it for their access. Ms. Lachman stated there is a practical difficulty for LaHaie to have another access to the property, due to the property being "land-locked," but while the private drive is not currently meeting standards it still would facilitate use of the property. The full application submitted to the Township addresses the current conditions of the road. Ms. Lachman stated the granting of the variance would not alter the essential character of the area and the circumstances were not self-created since Mr. LaHaie is purchasing the land-locked parcel, but has not created the issue.

Planning Director, Jim Ferro, summarized the staff memo as provided in the board packets and projected a screen share for everyone to view the details. Ferro stated the Township previously received and approved the land division creating a 2.5-acre lot split off from the Dietrich's parent parcel. Ferro stated the land division plan, in addition to creating the lot, shows the parcel description includes a 30-foot wide easement across the Dietrich's remainder parcel to connect to their existing driveway that goes out to Honey Creek Avenue. Ferro said the easement was identified as legal means of access to a public street that satisfies the requirement of the Land

Division Act for a parcel being accessible, therefore, don't consider it "land-locked." Ferro stated it has two potential means of access; one that satisfies the Township's legal requirements for a 30 ft. wide access and the second is legally in existence from the standpoint that the property has an easement out to Honey Creek Avenue on Baer Drive but not useable because that access is not conforming to the Township's access standards. Ferro explained that the private road does not conform with current zoning standards in respects; width of easement, width of surface, steepness, and lack of maintenance agreement.

Ferro mentioned of two previous similar variance applications that were denied by the Zoning Board of Appeals, but this current request is different because this property does have a legal access, the 30-foot easement to the north, although the Township has not seen a construction plan for a driveway that would comply with Township driveway standards. Ferro stated to install a driveway would require the property owner to obtain a permit from the State; Department of Environment, Great Lakes and Energy (EGLE) and a permit application has not been submitted for a driveway crossing at the creek corridor. There was a pre-application meeting on site that was requested by the property owner and a EGLE representative was in attendance. Ferro stated he spoke to an EGLE representative to see if an application for a permit had been submitted and asked what the criteria are for deciding whether to issue a permit for a proposed driveway crossing, and what he learned from the phone conversation is summarized in a memo in the file that is included in the packet.

Ferro stated that although the applicant has not submitted for a permit the applicant shared a very preliminary grading plan with him that depicts the placement of fill across the creek corridor and enclosing the small tributary stream of Honey Creek that would need to be crossed to obtain access to the property. Ferro continued to explain the grading plan details as shown on the projected screen. Ferro stated when he spoke with the State representative, she indicated that it would be unlikely they would ever approve a permit for that significant of a fill of a high-quality tributary stream and for any permit decision they would be looking for a means of crossing the stream that would be least impactful to the aquatic resources involved; most likely a clear span bridge.

Ferro said the State's administrative rules for stream crossing permits state that a permit will not be approved unless it satisfies two standards: a) that the adverse impacts to the public trust, riparian rights, and the environment will be minimal, and b) that a feasible and prudent alternative is not available. If the applicant is not permitted to use Baer Drive, then he satisfies one of the two criteria for a decision and he would not have any feasible alternative to access the property and that would increase the likelihood for a permit for a stream crossing using a clear span bridge being approved.

Ferro stated with all of that speculation what the State and/or applicant may or may not do, the Zoning Board has specific criteria to evaluate to determine whether a variance should be granted and the following criteria (with staff comments for each) are satisfied:

**1. Whether unique physical circumstances exist which cause a "practical difficulty" in complying with the Zoning Ordinance standards.**

Ferro stated you can evaluate the practical difficulty standard for each of the four private road standards that are not satisfied; easement width, pavement width, grade, and the private road maintenance agreement requirement. Satisfying two of the standards, the easement width and the maintenance agreement, are not within the applicant's control. There is no way the applicant can satisfy those standards unless property owners consent to widening the easement and that the property owners cannot be forced to enter into a private road maintenance agreement.

**2. Whether granting the variance would alter the essential character of the area.**

Ferro said granting of the variance would not alter the essential character of the area and it's the opposite case that if the variance is denied and if the applicant pursues and obtains a permit for crossing the stream could result in significant alteration of the natural features in that neighborhood.

**3. Whether the circumstances leading to the variance are self-created.**

The applicant has not taken any actions that have contributed to the non-conformity of Baer Dr. with the Township's standards.

**4. Whether amending the Zoning Ordinance standards is a more appropriate remedy to the situation.**

The type of variance requested is not so common or recurrent as to warrant amending the zoning regulations.

Ferro said we haven't had a private road variance request this complicated and shared a few examples of some requests in the past.

Ferro stated a variance is not an all or nothing situation and an approval could potentially be crafted that requires incremental improvements to the road.

In conclusion, Ferro identified 3 alternative actions to consider; total denial, total approval, and variance approval with certain conditions (also included in the memo in the packet).

Ferro stated he had no specific recommendations today and given the circumstances, the Board may want to consider postponing action on the variance application and consult with the Township's legal counsel prior to taking action.

Chair Dixon opened the public hearing at 4:57 p.m.

Jason Clark, 117 Honey Creek, stated this new parcel is not a party to the old ingress/egress easement of the Baer Dr., liber 1471 page 477, and does not have any legal access on Baer Dr. to use or enter the parcel from the easement.

Ben Schaal, 55 Honey Creek, stated he is the first driveway off of Baer Dr. Mr. Schaal said this whole meeting is about access, and at its current status access is denied. He said the two property owners, Dietrich and LaHaie, have hired excavating and tree cutting services that constantly use the drive to access the parcel. Mr. Schaal stated the idea of integrity that these rules are in place to be respected, this entire time the denial of access has been disrespected and he is disappointed this meeting has been approached like none of that has happened.

Marti O'Brien, 61 Honey Creek, stated almost exactly a year ago she spoke on the same issue and nothing has changed their concerns; Baer Dr. cannot handle heavy construction traffic or any additional traffic and the lot sits too close to a wetland. Ms. O'Brien stated what has changed is the sequence of events like the reckless destruction of nature with no approved plan, and doesn't feel the Township has been responsive to their concerns and encourages the denial of this variance.

Andrew Shier, representing Chris DeYoung at 105 Honey Creek, stated he has previously submitted in writing why the variance request should be denied. Mr. Shier highlighted 3 key points that are very important in this case. Mr. Shier stated, first this request was previously submitted and denied by the ZBA. The only thing that has changed is parcel A was created with its own secondary legal access to the north which does comply with the Township Zoning Ordinance; that fact alone makes this variance request 'unapprovable'. Second, there is no practical difficulty justifying this request; the proper focus is on the characteristics of the property itself. Finally, this issue is entirely self-created. The location of parcel A and the location of access easement to the north were selected and chosen by the property owner with full recognition of all access issues and problems; and now come to the ZBA asking relief from the Zoning laws. Mr. Shier recommended the ZBA deny the variance request.

Carolyn Mascho, 107 Honey Creek, stated our understanding is it not only the 1 parcel that has been sold off, but that Dietrich's land may also be split into further parcels. In fact we are not talking about only 1 more resident in this community, but potentially up to 5 or even 10 more; which would be a lot of traffic for their very small road.

Public comments closed at 5:15 p.m.

Dixon gave the applicant an opportunity to respond to the public comments.

Ms. Lachman, representing applicant, LaHaie, stated in response to the comment about additional development; this parcel A (the southern parcel) is not in the same geographic position as the other possible parcels.

Ms. Lachman responded to what Mr. Shier discussed. She stated circumstances have changed since the previously submitted request in that the parcel has been split and it's not a self-created issue because Mr. LaHaie does not own the parcel to the north, he is going to be the owner of parcel A, which is the southern parcel. Mr. LaHaie is the applicant and not the person that created the parcel split.

Ms. Lachman stated in regard to the easement to the north there isn't approval from EGLE to build that and there are significant hurdles in order to complete it and if it can't be completed that would create a 'land-locked' parcel. Ms. Lachman stated as it stands today, there is no ability to access from the north, so because of that a variance would be totally appropriate. Mr. LaHaie wants to be a good neighbor and helpful on this issue and if there is a need to increase the width or grade of the road, he would want to find a solution. Ms. Lachman stated Mr. LaHaie does meet all of the standards that are required in order to be granted a variance and asked the ZBA Board to respectfully grant the variance.

Chair Dixon closed the public hearing and opened Board discussion.

Smith asked for clarification who the owners are of both parcels. Ferro stated Mr. LaHaie has a purchase agreement in place to purchase the property from the Dietrich's but hasn't closed on it yet.

Smith stated if there is a practical difficulty in using the north entrance, why would we grant a split to make a parcel that has no access anywhere; they must have used the north to split off that lot. Ferro stated the easement to the north was the basis for the 2.5-acre lot being deemed as meeting the accessibility requirement that is in the Land Division Act.

Dixon asked Ferro if the Dietrich's parcel has rights to utilize that easement or is the easement only written to a certain property. Ferro stated he doesn't know of any written easement terms but the legal description submitted for the 2.5-acre parcel is described: "together with a non-exclusive easement over a 30 ft. wide strip of land 15 ft. to the right and left of the following centerline commencing along the west line of Honey Creek Ave." Ferro added that looking at the survey of the property, it doesn't just border the property but is actually on the property.

Ferro projected a screen share of the parcel legal description map also included in the packet.

In viewing the map Burton questioned the legal rights to use that access road, Baer Dr., as it appears to be on his property.

There was Board discussion regarding seeking legal counsel on this issue; whether the applicant has use of the Baer Dr. access, the Township's ability to approve a variance for something less than the complete exemptions from the standards the applicant is seeking, and possibly other issues.

Dixon referred back to the private drive non-conforming standards and the road maintenance agreement. Dixon stated the fact that we are adding another home to the roadway, we are obligated for all new lots to meet the access standards. Dixon stated the road is not in good shape and would like to understand how the road maintenance is handled in the neighborhood. Ben Schaal stated the maintenance is pretty simple they all have an email chain, Woods Landscaping comes to plow and they all pay their share, they fill pot holes, and a couple years ago had Tip Top Gravel put in new drainage to protect the houses at the bottom of the hill.

Nuttall, as he reviewed the diagram/map, stated he thinks we need to go take a look and that it seems appropriate to get legal counsel. Burton shared concern about the applicant doing work on property before officially owning it. Ferro stated from the Township's perspective it is not violating any Township rules for Mr. LaHaie to run equipment up and down the road, but the current condition is that he can't obtain a building permit for construction of a home if using Baer Dr. as sole means of access to his home.

Smith stated if that is not violating any Township rules, then it is between Mr. LaHaie and the rest of the homeowners on the private drive, therefore don't see a need to consult legal counsel. Smith suggested they establish the 4 findings that need to be made: Smith stated there is somewhat of a practical difficulty, but it doesn't alter the essential character, and amending the ordinance is not an issue, but she does think the circumstance was self-created. Smith stated she would tend to deny this variance request.

McNamara said he was in agreement with Smith. McNamara stated they got the land division approved based on the north access and now before getting denied from EGLE, they are going straight to where they prefer to have the access by doing the variance request. McNamara stated he was leaning towards denial because they have an access point, but haven't utilized it.

Dixon stated if there was a maintenance agreement established and improvements were made to the roadway, that would support the entire neighborhood. Dixon stated if a maintenance agreement cannot be formed and road widening cannot be done, then he would also agree with Smith and McNamara.

Ferro stated the Board may want to take some time through a postponement for preparation of some formal findings for you to consider taking action at either the next regular meeting or a Special meeting.

Following Board member discussion, it was moved by Burton, supported by Nuttall, to postpone the meeting for further findings until December 22, 2020, when the Township Planner will provide additional information. Motion passed by roll call vote 5-0.

## **CORRESPONDENCE**

No correspondence was received.

## **PUBLIC COMMENT**

There was no public comment.

**ADJOURNMENT**

Moved by McNamara, supported by Burton, to adjourn meeting at 5:58 p.m.

Respectfully submitted,

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Jacqueline Smith  
Ada Township Clerk

rs:eb