



**ADA TOWNSHIP ZONING BOARD OF APPEALS AGENDA
TUESDAY, APRIL 2, 2019, 4:30 P.M.
ADA TOWNSHIP OFFICES
7330 THORNAPPLE RIVER DR. SE, ADA, MICHIGAN**

- I. CALL MEETING TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF AGENDA**
- IV. APPROVAL OF MINUTES** – January 8, 2019 Meeting Minutes
- V. OLD BUSINESS** – None
- VI. NEW BUSINESS**
 - 1. Request for variance from accessory building standards, to permit accessory buildings without a principal structure; the existing home is planned to be demolished with an existing garage (*1200 sq. ft.*) and a shed (*150 sq. ft.*) being proposed to remain onsite, 41-15-33-426-019, 7080 Ada Dr. SE, Brent Dykstra with AMDG Architects, for Windy Hill LLC.
- VII. CORRESPONDENCE**
- VIII. PUBLIC COMMENT**
- IX. ADJOURNMENT**

**ADA TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF THE TUESDAY, JANUARY 8, 2019, REGULAR MEETING**

A regular meeting of the Ada Township Zoning Board of Appeals was held on Tuesday, January 8, 2019, 4:30 p.m., at the Ada Township Office, 7330 Thornapple River Drive, Ada, Michigan.

CALL TO ORDER

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

ROLL CALL

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

Members absent: None

Staff Present: Bajdek, Ferro, Winczewski

Public: 9 Community members

APPROVAL OF AGENDA

Moved by Nuttall, supported by McNamara, to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

Moved by Smith, supported by Burton, to approve the December 4, 2018, minutes as presented. Motion carried unanimously.

OLD BUSINESS

None.

NEW BUSINESS

- 1. Request for Modification to a Condition of Approval for a 1994 Variance, to remove the non-buildable restriction for a 2-acre parcel, Bob Tol for MB&T Partners, LLC, 5951 4 Mile Rd. NE, 41-15-05-100-034**

Applicant was unable to attend the meeting. Jonathan Anderson, Partner at Varnum Law, was present to speak on the applicant's behalf. Mr. Anderson stated the goal for Mr. Tol is to sell the subject parcel to an interested party for the purpose of building a home. Mr. Anderson gave a brief history of how the subject parcel was purchased, noting that the non-buildable restriction was not recorded on the title, Access Kent website, or anywhere else other than the 1994 ZBA minutes. Mr. Anderson stated the Staff Memo indicated this parcel is in the Agricultural Preservation (AGP) zone with a minimum of 1 acre. Zoning Administrator, Brent Bajdek, clarified, stating that the Staff Memo incorrectly stated AGP, however, the zoning for this parcel is in fact zoned Rural Preservation 1 (RP1), with a 5-acre minimum. Mr. Anderson stated there are nearby properties similar in size and feels it would not be

unusual to have a home on this size of a parcel. Mr. Anderson reiterated that this non-buildable restriction was stated but not recorded and requested the Zoning Board of Appeals overturn the non-buildable restriction on the 1994 Variance.

Dixon opened the floor for staff comments.

Bajdek stated, for clarification purposes, this is not a variance request or an appeal request. It is a request for a modification to a condition of approval for a 1994 variance to remove the non-buildable restriction for a 2-acre parcel. Bajdek gave an overview and analysis of subject parcel as outlined in the staff memo. Bajdek stated that even though there appears to be a questionability of knowledge regarding the non-buildable condition of approval, it is highly transparent that the subject parcel was never to be built upon, based on the imposed condition of approval by the Board in 1994. Bajdek stated that staff recommends denial of the request.

Dixon opened the floor for public comments at 4:45 p.m.

Daphne Anderson, 5905 4 Mile Road, stated she bought her house in 1994, which is the parent parcel of the subject property. She approached the Rasch family years ago to purchase the 2 acres but the Raschs declined the offer and told her they needed the 2 acres to access their orchard. Mrs. Anderson stated 2 acres is not the norm for lot size in the area. She stated her family moved to the area to get the rural residential feel and not have neighbors so close.

Mark Anderson, 5905 4 Mile Road, stated he finds it hard to believe the current owner of the property was not aware of the situation earlier on. The developer needed this 2-acre parcel as a second access point for the larger development and that is why he acquired it. Mr. Anderson stated that if the developer looked into the minimum acre requirement for Ada Township, he would have seen that this parcel was too small to build on at the time of purchase.

Doug Soho, 5930 4 Mile Road, stated he agrees with everything Mr. and Mrs. Anderson just stated. Mr. Soho stated the parcel didn't meet the zoning requirements for lot size in 1994 and a variance was given for this smaller lot size with the condition that it never be built on. Mr. Soho stated the low value has been reflected in the tax assessment over the years and in the latest purchase price. Mr. Soho stated he feels this is an issue with disclosure from the original seller.

Ray Moulden, 5769 4 Mile Road, stated that there was a very low assessment and low taxable value at the time of purchase. That should have raised questions to the buyer.

Dixon stated for the record, 2 emails and 1 letter were received from the following residents requesting the Board to not approve the modification: 1.) Mark Anderson of 5905 4 Mile Road, 2.) Sandy Walraven of 6100 4 Mile Road, 3.) Nevin Zolenski of 6151 3 Mile Road.

There were no further comments. Dixon closed public comments at 4:55 p.m.

Mr. Jonathan Anderson, Varnum Law, addressed the Board in response to the public comments. Mr. Anderson stated this small piece of property was part of a much bigger property located in Cannon Township. The focus was on the much larger piece of property but it doesn't change the fact that the customary way to do due diligence when buying property is to check the land records. That is how you find out about restrictions that run with the land. The buyers relied on their title work which did not indicate a non-buildable restriction. Mr. Anderson stated that he has no doubt Ada Township meant to make a binding restriction in 1994, however, it was not carried out in the proper manner and now this "mix-up" should not be held against the buyer. Mr. Anderson also stated that it would be

unfair to assume that because the property had low assessed value, the developer should have known it was non-buildable. This is an odd case and will likely not open the flood gates to all kinds of new development.

Dixon asked the Board members for comments.

Smith asked if Ada Township was notified by Cannon Township of this development. Planning Director, Ferro, stated that Ada Township was aware of the development but a formal notification was not given as it is not a requirement to do so.

Burton stated the subject property was purchased for a secondary access point for the development and was not purchased for the purpose of building a home.

Bajdek stated the developer did not notify Ada Township at any point about the access point to the development from this property.

Smith stated the assessed value of this property is \$5,000. It is hard to believe that a developer would not know that there is good reason for the value to be so low. Smith stated that she feels the recourse should be to go to the last person who did not disclose the restriction.

Burton stated that she feels the onus should be on the current owners as they did not notify Ada Township of the purpose of their purchase. Had they done that, they would have found out that this is an unbuildable site and this meeting today would not be necessary.

Dixon stated that he feels if the non-buildable restriction were lifted, then the property should be brought up to current standards. In this case, the property is only 2 acres but needs to be a minimum of 5 acres to have a residential home. For that reason, Dixon stated he feels this property can not be developed. Dixon stated the developer would still be able to apply for a Variance to build on this 2-acre parcel.

Mr. Jonathan Anderson stated that there is not a duty from a property owner to tell a municipality that they bought property or to disclose what they intend to do with the property. In regards to the low property value, Mr. Anderson stated the low value does not prove anything. He feels the Township should have recorded a document in 1994 that stated this is a non-buildable lot.

Nuttall stated it is important to respect the neighbors' expectations for their neighborhood.

Moved by Smith, supported by McNamara, to deny the request to remove the non-buildable restriction from the 1994 Variance for the 2-acre parcel located at 5951 4 Mile Road.

Motion carried unanimously.

CORRESPONDENCE

There was no correspondence other than the two emails and one letter which was noted above.

BOARD MEMBER/STAFF REPORTS

1. Approval of Meeting Schedule for Fiscal Year 2019-20

**Moved by Burton, supported by Smith, to approve the meeting schedule for FY 2019-20 as presented.
Motion carried unanimously.**

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Moved by Nuttall, supported by McNamara, to adjourn at 5:17 p.m. Motion carried unanimously.

Respectfully submitted,

Jacqueline Smith
Ada Township Clerk

MEMORANDUM

Date: 03-28-19



TO: Ada Township Zoning Board of Appeals
FROM: Brent Bajdek – Planner/Zoning Administrator
RE: Agenda Item for the April 2, 2019 Meeting

1. Request for variance from accessory building standards, to permit accessory buildings without a principle structure, Brent Dykstra with AMDG Architects, for Windy Hill LLC, 7080 Ada Dr. SE, 41-15-33-426-019

Overview

A single-family dwelling and two (2) accessory buildings presently occupy the subject 4.66-acre site, zoned R-2 Single-Family Residential. The irregularly shaped parcel narrowly fronts Ada Drive and extends southward, terminating at the Thornapple River. Site improvements are currently concentrated to the eastern extent of the property, with the southern portion of the site containing the single-family dwelling; the accessory buildings are located north of the dwelling.

It is the desire of the applicant to demolish the existing single-family dwelling with the two (2) accessory buildings remaining onsite; however, an accessory building is not permissible without a principal structure pursuant to 78-20(a)(1) of the Zoning Ordinance.

The applicant has expressed that the planned retainment of the accessory buildings is due to the intent to construct a new single-family dwelling (*principal structure*) on the property in the future, with them becoming accessory to such dwelling once it is built. *It should be noted that the applicant has not indicated a timeframe regarding commencement of construction for a new dwelling on the site.*

The existing accessory buildings proposed to remain onsite are a detached garage (1200 sq. ft.) and a shed (150 sq. ft.); the applicant has stated that the small shed not planned to be demolished due to an electrical meter being attached/in close proximity to it.

Please note if the subject variance request were to be granted by the Board, the time in which the property would be brought back into conformance with 78-20(a)(1) of the Zoning Ordinance would be once a new residence is constructed on the property.

Based upon the configuration of the lot, it has been determined that the existing accessory buildings are not considered to be located within the front yard; a variance for the existing accessory buildings to be situated north of a future dwelling on the property is unnecessary.

Analysis

Since the subject variance request is related to use (*to permit accessory buildings without a principal structure*), it is considered a **use variance**.

The demolition of the single-family dwelling and not the accessory buildings would result in the non-residential buildings becoming the principal use of the property, which is not allowable by right or by special use.

*Please be reminded that a **use variance** is a variance that permits a use of land or structure that would not otherwise be allowed in the zoning district in which the parcel is located. Use variances are considered inappropriate except when the property cannot be reasonably used as it is presently zoned and other attempts to obtain local approval have been denied.*

The Board of Zoning Appeals may grant variances only upon finding that the following criteria have been satisfied:

1. Whether unique circumstances exist which cause a “hardship” in complying with the Zoning Ordinance standards.

There are no unique circumstances peculiar to the property, which cause a hardship in complying with the Zoning Ordinance standards. The property can continue to be reasonably used for uses permitted within the subject zoning district without the need for a variance.

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

The granting of the variance would not alter the essential character of the area. No physical modifications to the exterior of the existing buildings are proposed at this time.

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

Circumstances leading to the variance are self-created.

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

An amendment of the Zoning Ordinance is not deemed as an appropriate remedy to the situation. The conditions leading to this variance request are not so common or recurring, which would indicate that amending the zoning regulations would be a more appropriate solution.

Conclusion & Recommendation

No unique circumstances peculiar to the property exist, which cause a hardship in complying with the Zoning Ordinance standards. The property can continue to be reasonably used for uses permitted within the subject zoning district without the need for a variance.

If the Board does not grant the subject variance, compliance with Zoning Ordinance regulations require that the existing single-family dwelling remain onsite as long as an accessory building exists on the property until a building permit application submittal is received for the construction of a replacement dwelling on the property or all buildings are demolished.

Denial of the variance is recommended.



TOWNSHIP

7330 Thornapple River Drive, P.O. Box 370, Ada, MI 49301 | 616.676.9191 | adatownshipmi.com

ZONING BOARD OF APPEALS APPLICATION (ZONING VARIANCE OR ADMINISTRATIVE APPEAL)

1. APPLICANT:

Name: BRENT DYKSTRA, AMDG ARCHITECTS
 Address: 25 COMMENCE SW SUITE 300 City: GRAND RAPIDS State: MI Zip: 49507
 Telephone: (616) 454-1600 Email: bdykstra@amdgarchitects.com
dlewis@amdgarchitects.com

2. OWNER (If different than above):

Name: WINDY HILL LLC
 Address: 126 OTTAWA AVE NW #500 City: GRAND RAPIDS State: MI Zip: 49503
 Telephone: (616) 975-5706 Email: danc@cdv5.com

3. DESCRIPTION OF VARIANCE OR APPEAL REQUEST: SEE MEMO DATED 3.14.19

4. PERMANENT PARCEL NUMBER: 41-15-33-426-019

5. PROPERTY ADDRESS: 7090 ADA DR SE 6. ZONING DISTRICT: R2

7. ATTACH:

- A. AN ACCURATE SITE PLAN OF THE PROPERTY, DRAWN TO A STANDARD ENGINEERING SCALE, SHOWING:**
- 1) Property boundaries.
 - 2) Existing and proposed buildings or structures.
 - 3) Distance from lot lines of each existing and proposed building or structure.
 - 4) Unusual physical features of the site, building, or structure.
 - 5) Abutting streets.
- B. A NARRATIVE STATEMENT WHICH ADDRESSES COMPLIANCE OF THE VARIANCE REQUEST WITH THE STANDARDS FOR APPROVAL CONTAINED IN THE ZONING ORDINANCE AND LISTED ON THE REVERSE SIDE OF THIS APPLICATION FORM.**

APPLICATIONS SUBMITTED WITHOUT A NARRATIVE STATEMENT WILL NOT BE ACCEPTED.

8. PETITIONER AFFIDAVIT:

I understand that if the requested variance or appeal is granted, I am not relieved from complying with all other applicable requirements of the Ada Township Zoning Ordinance or any other Township Ordinances. By signing, the applicant and owner hereby grant permission to Ada Township officials and employees to enter upon the subject property for purposes of review and evaluation of this request.

APPLICANTS SIGNATURE: [Signature] DATE: 3/14/19

OWNER'S SIGNATURE: [Signature] DATE: 3/14/19
 (If different than applicant)

9. PLEASE NOTE THE FOLLOWING BOARD OF APPEALS PROCEDURES:

- a) The application form, application fee, site plan and narrative statement must be submitted at least one (1) month prior to the regularly scheduled Zoning Board of Appeals meeting. *Regular meetings of the Zoning Board of Appeals are generally held on the first (1st) Tuesday of each month at 4:30 p.m.*
- b) Notices of the hearing will be given at least 15 days prior to the hearing to the applicant and to all property owners and occupants within 300 ft. of the property subject to appeal.
- c) Following the hearing, the Board of Appeals will make its decision and may reverse or affirm, in whole or part, or may modify any order, requirement, decision or determination.
- d) The variance or exception expires one (1) year after it is granted if no action is taken to effect the variance within the period. The Zoning Board of Appeals may grant up to an additional one (1) year extension of this time limit.
- e) A zoning variance does not excuse the applicant from obtaining a building permit. A building permit must be secured before construction begins.

CRITERIA FOR APPROVAL

The Zoning Board of Appeals treats each variance or appeal request individually and approves or denies each request on its own merits. In order for the Board of Appeals to grant a variance or appeal the applicant must satisfy all of the following findings which are contained in Section 78-107 of the Ada Township Zoning Ordinance:

That where there are practical difficulties or unnecessary hardship in carrying out the strict letter of this Ordinance, the Board of Zoning Appeals shall have the power to vary or modify any of the provisions hereof so that the spirit of the Ordinance shall be observed, public safety promoted, and substantial justice done. The Board of Zoning Appeals may grant such variances only upon finding that all of the following conditions exist:

- a) *Where it is found that, by reason of the exceptional narrowness, shallowness or shape of a specific parcel of property, or by reason of exceptional topographic conditions or other extraordinary situation of the land or structure or of the use of property immediately adjoining the property in question, the literal enforcement of this Ordinance would involve practical difficulties or would cause undue hardship; provided that no variance shall be granted on a lot if the owner owns adjacent land which could, without undue hardship, be included as part of the lot in question avoiding the need for a variance.*
- b) *Where it is found that there is practical difficulty or unnecessary hardship in carrying out the strict letter of this Ordinance and the ordinance can be varied in such a way that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.*
- c) *Where it is found that the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation in this Ordinance for such condition or situation.*

Please note that the verbiage of the above stated conditions are generally abbreviated due to redundancy when reviewed by Staff and the Board.

APPLICATION FEE: RESIDENTIAL USE: \$100.00 NON-RESIDENTIAL USE: \$300.00

TO BE COMPLETED BY THE ADA TOWNSHIP PLANNING DEPARTMENT

Application received: _____ by: _____
(date)

Application fee of \$ 100.00 received: 3/14/19 by: [Signature]
Windy Hill LLC (date)

Check No: 4475

Receipt # 270566

to: Brent Bajdek, Ada Township Zoning Administrator

from: Brent Dykstra, AMDG Architects

re: 7080 Ada Drive

cc: Dan Clemo, CDV5 Properties

date: March 14, 2019

Dear Mr. Bajdek

The following project description and narrative are intended to accompany the zoning application for 7080 dated March 14, 2019

Description of variance:

Applicant seeks approval to demolish existing single-family residence at 7080 Ada Drive while allowing the existing detached garage and existing shed to remain. Applicant understands that an accessory structure without a principal residence does not conform to the Ada Township Zoning ordinance 78-20 a 1 (no accessory structure without principal residence) and 78-20 a 2 (no accessory structure in the front yard of a residence in an R2 district). Variance is requested for the following:

1. For the existing detached garage and shed to remain, without a principal residence, for the period between demolition of the existing residence and construction of a new residence
2. For the detached garage to exist in the front yard of the property given the design intent for a new residence to be located south of the existing detached garage.

Narrative

1. Applicant requests that existing garage not be required to be demolished at the same time the existing home is to be demolished based upon the intent to construct a new residence. The new residence would bring the property into conformance relative to the requirement for a primary structure on the property. The existing detached garage and shed exist within the current front yard. Locating a detached garage in a side or rear yard would present a practical difficulty based upon the severely sloping grades on the site.
2. The applicant proposes that regarding visual buffer, screening, and conforming use, allowing the existing garage to remain observes the intent of the ordinance.
3. The combination of parcel shape and topography in this instance are not so recurrent as to warrant the formation of a general regulation in the ordinance.

