

**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