



**SPECIAL MEETING  
ADA TOWNSHIP ZONING BOARD OF APPEALS MEETING MINUTES  
WEDNESDAY, FEBRUARY 16, 2011, 4:30 P.M.  
ADA TOWNSHIP OFFICES  
7330 THORNAPPLE RIVER DR. SE, ADA, MICHIGAN**

**MEMBERS PRESENT:** Fields, Boman, Burton, Lowry and Hartley

**STAFF PRESENT:** Kushion and Thompson

**COMMUNITY PRESENT:** 8

**ABSENT:** None

**I. CALL MEETING TO ORDER:** 4:30 pm

**II. APPROVAL OF AGENDA** – Moved by Member Lowry, supported by Member Burton  
Yes: 5 No: 0 Absent: 0 Motion Carried

**III. APPROVAL OF THE FEBRUARY 1, 2011 MEETING MINUTES**-Moved by Member Burton, supported by Member Fields. Yes: 5 No: 0 Absent: 0 Motion Carried

**IV. NEW BUSINESS-** None

**V. OLD BUSINESS**

- 1. Request for Variance from Zoning Regulations to allow a “Touchdown and Lift off area” to be 227 Feet from a property line instead of the required 300 feet and 385 feet away from the nearest building instead of the required 500 foot setback, 41-15-33-300-053, Richard M. DeVos Jr. and Elisabeth D. DeVos, 1170 Fox Hollow.**

Christian Meyer, Attorney for the DeVos’s, was present for the variance request. He stated that after everyone had a chance to visit the site, everyone was in agreement of lessening the variance to 70 feet from the property and 85 feet from the Ada Christian Gym. It would still allow a 20 foot planting area to the south of the TLOF that Mr. Ferro and the Richters requested to screen them. Mr. Meyer submitted Exhibit 13 which was Mr. Weatherbee’s submission to the Township on Monday with the new location they are asking approval for. Mr. Meyer stated the Zoning Board of Appeals asked for a topographical map of the east side of the property with an overlay and submitted that also which was marked as Exhibit 14.

Chairman Boman asked the Zoning Board if there were any questions.

Member Fields asked Mr. Meyer if he was scheduled to be before the Planning Commission the next evening. Mr. Meyer stated that was correct.

Member Fields asked Mr. Nelson, representative for Mr. DeVos, would there be a lot of changes made to the topography/terrain on the east side of the road which would include trees. Mr. Nelson stated that was true. Mr. Nelson stated for the record, he was referencing Exhibit 14.

Member Fields asked Mr. Nelson if the area, of the proposed helipad would be in a low lying area and Mr. Nelson stated that was true.

Chairman Boman asked if the tree removal was necessary due to the glide pattern and Mr. Nelson stated due to FAA certification you would have to have tree removal.

Member Fields questioned encounter with terrain, large number of trees and the flight path which would be altered.

Mr. Nelson stated it would be a higher elevation which Mr. Weatherbee stated would be twenty feet, and Mr. Nelson stated it would be less shielding for the neighbors. Mr. Nelson stated for the record, different a flight path maneuver would still use the proposed and existing paths.

Richard DeVos, Jr. introduced himself and thanked the Zoning Board of Appeals for their time and consideration. Mr. DeVos stated he and his team had spent a considerable amount of time in coming up with a good solution; they've worked hard to be diligent and a good neighbor and stated he would be grateful for the support so they could moved forward.

Opened to Public Comment

Duke Suwyn, 6570 Ada Drive, stated he was in favor of the project and as President of Ada Christian School Board, noted the applicants had taken into account the neighbors along with being very gracious and kind in their answering of questions.

Chairman Boman read into the record two e-mail communications:

First, from John Dykema, 1345 Nottinghill Court which is on file in the Clerks Office and the other Communication from Robert Stead, 6530 Ada Drive, which is also on file in the Clerks Office.

Richard DeVos, stated, in reference to the two e-mails received, they are very cautious they do not fly low altitude in the area and there are other helicopters flying in the area. Mr. DeVos stated the margin being proposed and requested in the variance exceeds FAA requirements and if there was a safety concern, he would not be involved personally either.

Closed to Public Comment

Member Fields gave an overview of the law and made sure the Zoning Board was clear on what the law is. Member Fields discussed drafting history as reference had been made in the public record. The Zoning Board of Appeals decides to call for an interpretation if necessary and another to grant a variance. \*Member Fields stated he would like to make a record that no one asked that question of the Zoning Board of Appeals, as he understood the staff made an interpretation. Secondly, there was a referendum and that's our law. Do we grant a variance to that law? Member Fields stated for the record "I was skeptical of that request initially for this reason: I'm one of those people who thinks if there is a law, then people who serve as judges or in a judicial capacity should apply it. They shouldn't rewrite it. They shouldn't try to make it say what they would like it to say. But the fact of the matter is the whole reason that we have variances under the Zoning Enabling Act is that you can't in zoning law do a one-size-fits-all rule. It's just impossible. Particularly in a place like Ada where we have all sorts of dimensions and set-backs. We have terrains. And when the township officials pass the law, they can't possibly perceive every circumstance. And that's why our statutes contemplate that one of the roles that the Zoning

Board of Appeals has to play is to grant some relief under an ordinance when it's merited. So what's the standard we use? I want to make a record of this because I think it's probably worth the Township's looking into it. I don't think the Ada zoning ordinance exactly gets it right. I think we all should be aware of that. Our ordinance talks about granting a variance when there is either practical difficulty or undue hardship. There is a problem with that because what's being requested here is something called a dimensional variance. Set-back.. That's as opposed to a use variance. And I think if you take a look at the law in Michigan, dimensional variances are supposed to be evaluated only under the practical difficulty standard. Use variances, you can consider undue hardship. Now maybe that's just a lawyer who cares about legalese here. But I think we need to be careful, given that we have a complete record, to assess this under the legally correct prong which is practical difficulty. All that said, just a few -- this is more just background comments: I think notwithstanding the fact that we've had a number of prior decisions by the board cited in support of this request, we should keep in mind that when we try to decide whether there is practical difficulty to grant a variance, it is a case-by-case situation. And that's especially true here because we have never had a case where we have been asked to grant a variance under an ordinance that was just passed. And really what we want to consider here is can we do it in such a way that keeps within the spirit of the ordinance and keeps in mind that somewhere down the road someone may say "Hey! Remember when you granted a variance with respect to the DeVos property? Well, we want to have a helicopter now and we want to have a helipad, and we are just doing what they did." 'Well, that's where our job gets a little bit trickier because we need to make sure that we do what we think is right under the ordinance. So there is my background on the law.'

Member Burton stated she was in favor of the request, considering the topography, the flight patterns, and the height. Also consideration of the neighbors and the school.

Chairman Boman stated he was somewhat skeptical about the application because of the newness of the ordinance and that it would be difficult to justify providing a variance to what is one of very few applications for take-off and landing sites the board would have. Chairman Boman stated he would have to rely on the people who are experts in the area to describe for him the practical difficulty of landing and taking off in a helicopter and the need for a glide path, limited clearing of trees, the school's input regarding safety concerns/issues, and feels he would go forward with an approval as well.

Member Hartley stated he agreed with all of the comments made and had the same thoughts as Member Fields, but that the new landing site would be better so he supported the request for the variance.

Member Lowry stated he was in favor of the variance request.

Member Fields called for a motion, adding for the record "that the fact that the Applicant and his professionals saw fit to come up with an alternative proposal, to me this speaks trying to work within the spirit of the ordinance, and I, as a zoning official, am not going to sit here and extract another pound of flesh by saying 'Go four feet here, there, or the other place.'"

Member Fields moved to approve the variance request with 70- and 80- foot measurements that were given to the Zoning Board of Appeals for the alternative pad. (Zoning Administrator Kushion stated it would be submitted as Exhibit 13, just for purposes of your motion; 230 feet from the property line, 415 feet from the school building), supported by Member Lowry. Yes: 5 No: 0 Absent: 0 Motion Carried.

**VI. CORRESPONDENCE**-Recieved two letters regarding the variance request in Old Business, No. 1. and read aloud by Chairman Boman

**VII. PUBLIC COMMENT**-None

**VIII. ADJOURNMENT**-Moved by Member Fields to adjourn at 5:05 pm, supported by Member Hartley. Yes: 5 No: 0 Absent: 0 Motion Carried

\*Upon approval of the 2/16/2011 minutes, Member Fields stated and requested that on page 2, in the first paragraph after “Closed to Public Comment”, the following correction/addition be made and entered into the minutes. All red words are additions and corrections as follows:

Member Fields stated he would like to make a record that no one asked that “**first**” question of the Zoning Board of Appeals, ~~as~~ “**although**” he understood the staff made an interpretation, “**but the point is moot and there is no basis to rely on any prior interpretation.**”

---

Susan Burton  
Ada Township Clerk

---

Date

RS/dt