

**ADA TOWNSHIP ZONING BOARD OF APPEALS
MINUTES
TUESDAY MARCH 7, 2006, 4:30 P.M.
ADA TOWNSHIP OFFICES
7330 THORNAPPLE RIVER DR. SE, ADA, MICHIGAN**

MEMBERS PRESENT: Hartley, Korth, Pratt, Boman and Fields

STAFF PRESENT: Kushion and Thompson

COMMUNITY PRESENT: 12

ABSENT: 0

I. CALL MEETING TO ORDER-4:30 PM

II. APPROVAL OF AGENDA-Moved by Co-Chair Fields and seconded by Member Korth.
Yes: 5 No: 0 Agenda Approved

III. APPROVAL OF FEBRUARY 7, 2006 MEETING MINUTES-Moved by Co-Chair Fields and seconded by Member Hartley. Yes: 5 No: 0 Minutes Approved

IV. OLD BUSINESS –None

V. NEW BUSINESS

1. Request for Variance to Permit a Private Stable Building Less than 150 Feet from Side lot lines, in the Rural Residential (RR) District, 640 Honey Creek NE, 41-15-23-301-007, Robert and Mary Jo Pomeroy.

Mr. and Mrs. Pomeroy are present for the variance request. Mr. Pomeroy stated the request is to build a small structure to house a miniature horse. The narrowness of the lot is the issue and they are asking to adjust the lot requirement for the new structure, which would be like a shed and the approximate size would be 8 x 8, with use for yard equipment. The applicants presented a letter from Lori Frye, who they share two property lines with, stating she does not object to the request. Mr. Pomeroy stated other neighbors were contacted by the applicants and did not object to the request either.

Open to Public comment.

Closed to Public comment.

Open to Board discussion.

Co-Chair Fields stated “subject to the condition that it be limited to two miniature horses” moved to approve the variance request. Seconded by Member Pratt. Yes: 5 No: 0 Motion Carried.

2. Request for Variance from Private Road Standards to allow a parcel to be accessed from an easement with only 12 feet of width, smaller than the 30 feet required, Bette Roberts, 2455 Pettis NE, 41-15-07-251-001.

Bette Roberts is present for the variance request. Mrs. Roberts stated George B. Davis is present as her attorney to represent her. Mrs. Robert gave a presentation on the history of the purchase of the property with her late husband in 1975 and made a land contract with their son, John, in 1979. Mrs. Roberts stated her son John divorced, sold his home on property she had sold him and Joe and Stacy Niedzwiecki purchased it. There was an easement through this property which is 12 foot and was created for purposes of allowing continued access by the Roberts to their river property.

Co-Chair Fields requested the zoning variance ordinance read and Zoning Administrator Kushion read it aloud to all present. The ordinance was adopted in 1990.

Mr. Davis stated two issues presented at the last meeting in front of the board were:

(1.) confirmation that the 12 foot easement reserved by the Robert's across the Niedzwiecki's lot intersects with the public right-of-way on Knapp Street; and

(2) evidence requiring access to the Robert's river property be provided over the existing parent parcel would constitute a practical difficulty or unnecessary hardship. When the Robert's sold their son the property a 12 foot easement was reserved in 1979. As of September 21, 2005, Excel Engineering and the Road Commission were contacted and the conclusions were acceptable regarding the right of way. Mr. Davis stated the practical difficulty is the easement is only 12 feet wide and there is no other way for Mrs. Roberts to access her property.

Co-Chair Fields asked if there was a citation and Mr. Davis stated he does not have a citation with him today. Mr. Davis stated to construct a new road off Pettis is impractical, which would require a variance and would be costly and a 12 foot easement across the Niedzwiecki lot is recorded and is legal. Mr. Davis stated this was created to allow access to the river property for Mrs. Roberts and the road commission stated they would grant a road permit for this request. There is no way to widen the 12 ft as the Niedzwiecki's own the other property. A letter from the road commission stating the easement was accurate was presented to the board; also a survey that was updated in 2005 was presented. A letter from Excel Engineering with fees to build a bridge (which at a minimum would cost \$35,000) was presented but did not include the cost of the driveway, wetland determination, easements or restoration. Mr. Davis stated the final costs would be more expensive. To put another driveway in would take wrapping three times around Mrs. Roberts house to get to her home. The 12 ft. easement was created by the Roberts for access to the river property. The Niedzwiecki's own both sides of the easement and it makes it difficult to widen the 12 ft. easement. Mrs. Robert's and the McClolskeys are willing to work with the Niedzwiecki's to minimize any disruption to vegetation.

The Board was presented with an overview of the parcel which showed where the staking is present on the Niedzwiecki's lot and an aerial view showing roughly where the 12 foot easement is on the Niedzwiecki's lot.

Mr. Davis asked to reserve the right to statements made by opponents, be open to clarification.

Mr. Davis stated this property was offered to the Niedzwiecki's and now they want it badly.

Open to public comment

Don Niedzwiecki, stated he was present for Joe and Stacy Niedzwiecki as their representative, who own the property the 12 ft. easement goes through. Mr. Niedzwiecki stated the lot size variance was nonconforming to the Niedzwiecki's and was a property adjustment. He stated all the information presented to the Zoning Board of Appeals by Mrs. Roberts was false. Mr. Niedzwiecki stated Mrs. Roberts neither owns nor has any legal rights to this property as it was sold to the McCloskeys in 2003 along with the 12 foot easement and no legal records or documents were ever filed.

Co-Chair Fields asked who owned the property at the Register of Deeds which at this time no one knew and Mrs. Roberts stated the sale of the property is conditional on the split. Zoning Administrator Kushion stated Mrs. Roberts owns the property according to the tax records at the township level.

Mrs. Roberts stated she had a document saying she was authorized to represent the McCloskey's regarding the matter of the easement.

Stacey Niedzwiecki, 5451 Knapp St., stated it was her understanding the 12 ft. easement was created for fire trucks and medical emergencies and a utilities easement was recorded at the time it was purchased by the Niedzwiecki's. A copy of this paper was presented to the Zoning Board of Appeals. Mrs. Niedzwiecki stated the document for the easement was created for egress and ingress and utilities. Mrs. Niedzwiecki stated there would be no practical difficulty for Mrs. Roberts if she were to access the 16 ft. easement on Pettis which is part of her property. She stated she did not wish unnecessary hardship on Mrs. Roberts, but wanted to state her concern.

Co-Chair Fields inquired if the fire chief had been spoken to regarding this easement. Mrs. Niedzwiecki stated the Fire Chief helped write the ordinance and stands behind the ordinance, but the Fire Chief had not been contacted for this particular easement.

David Aupperlee, 5385 Knapp NE, owns property on the west side of the Niedzwiecki's with one property in between, stated he sent Zoning Administrator Kushion an e-mail on December 6, 2005 regarding his opposition on the variance.

Brenda Bierens, 5435 Knapp St., stated she was representing Robert Bierens with a letter stating his interactions between Mrs. Robert and Tim McCloskey. The letter is on file.

Daniel Bersgma, 5435 Knapp St., stated he now owns the property at 5435 Knapp and is against the variance request.

John Wilson, stated concern the easement would go through his mother's property which is at 5559 Knapp St. and opposed the variance request.

Joe Niedzwiecki, 5451 Knapp St. stated he is against the variance request. The Niedzwiecki's retained the property through Bob Bierens, who sold it to them when Mr. Bierens went through a divorce. Mr. Bierens offered the piece of property when he went through the divorce to the Niedzwiecki's and Mr. Bierens offered the easement when he sold the property to Tim McCloskey who said he didn't want it unless he could use it exclusively.

Mr. Niedzwiecki stated he would be interested in buying the property from Mrs. Roberts and keep the property natural.

Closed to Public comment.

Open to Board discussion.

Member Korth stated this request was more about the lot split with an existing house on the land, then questioned whether to make a bad problem of narrow access even worse. Mr. Korth stated this has unfortunately created neighbor against neighbor.

Co-Chair Fields stated he struggled to see the practical difficulty, and in the final analysis, undue hardship. He stated a standard is not here to go along with the variance. Motion by Co-Chair Fields to deny the request and Member Pratt Supported. Yes: 5 No: 0 Motion Carried.

VI. CORRESPONDENCE-None

VII. PUBLIC COMMENT-

Mrs. Roberts thanked the board, then stated she owns 20 acres of property. Mrs. Roberts asked the Zoning Board of Appeals since there is an easement on the 20 acres would she have the right to use it and take down trees. Co-Chair Fields stated this was not a township issue and suggested she discuss this with her attorney.

Mr. Davis stated the 12 ft. easement was lawfully created and there is undue hardship for Mrs. Roberts. Mr. Davis stated the undue hardship applies to a use variance and the board has applied the wrong standard to the variance.

Co-Chair Fields stated the presentation by the applicant argued both practical difficulty and unnecessary hardship.

Joe Niedzwiecki, stated Mrs. Roberts is welcomed to use the driveway any time.

Closed to public comment.

VIII. ADJOURNMENT: 5:55 PM Moved by Co-Chair Fields and supported by Member Pratt.
Yes:5 No: 0

DEBORAH ENSING MILLHUFF, CMC
ADA TOWNSHIP CLERK

RS/DT

**All Correspondence regarding variance requests are on file in the Planning and Zoning Department.*