

ZONING BOARD OF APPEALS
Ross Township
November 7, 2007

The Ross Township Zoning Board of Appeals held its regular meeting on **November 7, 2007 at 5:30 P.M.** in the Ross Township Hall. Chairman Carpenter called the meeting to order and noted those present.

Present were: D. Carpenter
 E. Harvey
 J. Scott

Also present was: G. Webster, Building Department
 C. Rolfe, Township Attorney

APPROVAL OF AGENDA On motion by Scott seconded by Harvey the agenda was unanimously approved.

APPROVAL OF MINUTES OF September 5, 2007

On motion by Harvey seconded by Scott the Minutes of **September 5, 2007** were unanimously approved with the following changes.

Page 1, 1st paragraph under Abushmais issue: Capitalize “R” on “Rural”
Page 2, large paragraph at bottom: change the work “area” to “are”

OLD BUSINESS

Karim Abushmaies and Alexandra Bedford

Property located at: 6291 North 37th St.
Property tax I.D. #: 3904-30-415-030

This matter was tabled at the September meeting to allow Abushmaies and Bedford time to submit a complete site plan of their property. On motion by Harvey seconded by Scott and unanimously approved, this matter was removed from the table for discussion.

William Maybee, attorney for Abushmaies and Bedford, presented the request. They are asking that the existing structures (the retaining wall, shed, and the white vinyl fence) be allowed to remain as located. He said that at the time these structures were built the actual location of the property line was unknown. When a survey was done the fence was only 16 feet from the line. Their application therefore is to allow these structures to remain. He presented several maps showing the vicinity and an enlargement of the property. He noted that two adjacent parcels (010 and 030) are owned by Ambushmaies.

Parcel 012 is owned by neighbor, Mr. Asbel. He also displayed a contour map with 10-foot intervals. He noted that immediately behind the paddock the ground rises about 50 feet at a 1

foot rise to every 6 feet horizontal. He further noted that this is a Rural Agricultural zone, where horses are allowed. In the summer the horses are allowed to go up behind the paddock and graze in the field on top of the hill. In the winter, however, the horses can not go to this pasture. It is too dangerous. It would also require a person leading the horses up and down the hill every day. Additionally, no equipment can reach this pasture in the winter. He believes that this is a hardship and a practical difficulty. He also does not believe that allowing the paddock to remain would constitute a detriment to adjacent property owners. He acknowledges that the setback is supposed to be 50 feet, but he is asking that it remain at 16 feet from the property line. He said there is no increase in noise, odors, or traffic. He also does not believe that the health, safety, and welfare of the public would be effected. He stated that generally accepted practices have been followed in dealing with animals and manure.

Maybee continued saying that exceptional and extraordinary circumstances do apply to this property that do not effect other properties in the area, the steep hill for example. He believes that to deny the owner the right to have horses would deny them substantial property rights enjoyed by others in the zoning district.

Harvey asked if a fence existed in front of the retaining wall.

Maybee responded that it is irrelevant to this issue and was not shown. The paddock is 84 feet wide and 16 feet from the property line. If they were made to comply with the 50-foot setback, they would not be able to keep 5 horses in the paddock.

In response to Harvey, Bedford said that the 71-foot separation between the barn and the paddock is because a road is there.

Harvey asked why the road was put in the location where it is instead of being moved. This road prohibits the paddock from being moved to the south to comply with the Ordinance.

Carpenter asked why the road could not be moved to allow for the paddock to comply with the Ordinance.

Maybee said that it would have been too difficult to construct the road near the property line, and an old road did exist where this road is.

Bedford said that the reason for her request stemmed from a time last winter when she and a horse slid down the hillside.

Rolfe asked what the topographical characteristics are of the 71-foot space between the paddock and the barn.

Maybee answered that it was approximately the same as the paddock area, but they had to excavate it near the top to make it make a gentler slope. The road comes off of 37th Street to the west and vehicles have access to the barn. It is a gravel drive, and the Kalamazoo Road Commission dictated that a culvert had to be installed at the street. The KCRC also suggested what kind of driveway would be necessary to sustain the loads of trucks using it.

Carpenter still believes that the road could have been constructed near the property line, and the paddock could be made to comply.

Rolfé noted that there would be no material change in the topographical elevations at 37th Street. He wondered why the same preparation could not have been made to allow a driveway near the property line as was used to construct where it is.

Bedford said that she couldn't have built the road to the north because they did not own the property to the north when the road was constructed.

Asbel said that there are at least 150 feet from his house to the paddock, and there would be more separation if the paddock would be moved to the south.

Rolfé asked about the animal waste storage on and over the property line. It appears on a survey presented by Asbel as pile of horse manure. He said that the Township will enforce the 75-foot separation for storage of manure, that the applicant contends does not exist.

Rolfé reiterated that there is no substantial difference in terms of grade level between the area where the drive is and where the paddock is.

Scott asked for clarification that the private road is about 25 feet from the barn, and Bedford said that it is. She agreed that the road is probably about 12 feet wide possibly wider. Scott believes that the paddock could be moved with its exact dimensions to the south and comply with the Ordinance setback. He believes that this could be done without moving the private road.

Bedford said that the road and the paddock are only 5 feet apart and Scott's solution would not be possible.

Harvey said that he did an elevation calculation with his laser, and the hill is only about 37 feet above the street.

Harvey visited the property, and he believes that the paddock could be moved to the south. The driveway could either be moved or incorporated with gates through the paddock.

In response Maybee said that the vehicles that use this road have to have plenty of space. When they enter the barn, they actually have to open a paddock gate in order to back up to the barn. If she moved the paddock further south, access to the barn would be too restricted.

Bedford is also concerned with having horses in the pasture in the winter. She could not see them, and she is worried that a hunter might shoot one. She said that if she could not have horses in the paddock where it is, she couldn't have horses on the property at all.

Carpenter asked why the paddock could not be placed north of the house, and was told this area has other uses.

At this point Carpenter opened the meeting to public comment.

Mr. Asbel described that when the paddock was built, the survey stake was still in the ground showing where the property line was. He does not believe that the owner made a mistake. He believes that they did what they did on purpose. He noted that the drawing does not show a paddock in front of horse barn #2. He said that the property is 750 feet wide, and there is plenty of room for a paddock to the south. In fact it is flatter than the area behind the house. He said that this part of the property is already fenced, and has a horse in it.

In response to Rolfe, Asbel said that the 71-foot area between the paddock and the barn is virtually the same as where the paddock is.

Maybe said that it would be very difficult to place the paddock at the south end of the property, especially since the hill at the street is steeper to the south than it is at the paddock's current location.

Rolfe asked if it is correct that the storage barn and the horse barn were built in 2003. Bedford answered that this is true, and Rolfe offered that this may be a self-created hardship.

On motion by Harvey seconded by Scott and unanimously approved, the public portion of the meeting was closed.

Carpenter then directed the member's attention to the standards of Section 6.9. Members discussed the practical difficulties or extraordinary conditions on the property that prohibit alternate locations for the paddock on the property. Carpenter does not believe that such hardships exist, and Harvey agrees.

Rolfe offered the following facts: The area where the paddock is has similar characteristics and conditions as those in the 71-foot area between the paddock's current location and the barn, and the members all agree.

The members do not know if moving the paddock to comply with the ordinance would extend over the drive. The members also believe that there are other areas on the property where the paddock could be built. Harvey noted that the area between the horse barn and the road is being used for other purposes including parking cars. Harvey also believes that the area to the south of the house is approximately level with the paddock area. Where the horse barn and storage barn were built in 2003 is essentially flat. The members also agree that there are other areas where the paddock could be placed, and that the construction of the barns constitutes a self-created hardship.

The ZBA does not believe that there would be a substantial detriment to the adjoining property owner, but Harvey believes that the smell in the winter would be great.

The members do not believe that a variance here would materially impair the intent and purpose of the ordinance, because the ZBA finds that there are other places on the property for a paddock to be built.

Scott believes that harmonious existence of uses requires that a line be drawn, and the ordinance

recognized 50 feet as that separation. It should be maintained.

The members agree that granting a variance here would not impair the public health, safety and welfare. Scott mentioned the safety and health of the public could be damaged by such things as Eastern Equine Encephalitis

With respect to 6.9 A (1) the ZBA finds that there are no extraordinary circumstances that apply to this property specifically that do not apply generally to other properties in the same zone.

The ZBA agrees that no substantial property right is being denied if this variance were not granted, because there is area on the property to have a compliant paddock.

The members also agree that this situation is not recurrent in nature.

Based on the findings just made with respect to Section 6.9, Harvey moved to deny the variance, since there are no extraordinary circumstances that would justify a variance. The motion was seconded by Scott, and unanimously approved. The variance was **DENIED**.

In other business the ZBA accepted a memo from Bruce Dean, the Zoning Administrator, stating that the Lawrence construction now complies with the provisions of the ordinance. The ZBA concurs that because of the actions taken by the Lawrences, there is no longer a need for a variance on that property

NEW BUSINESS – None

PUBLIC COMMENT - None

ADJOURNMENT

The meeting was adjourned at approximately 7:10 P.M. by unanimous consent.

Respectfully submitted,

Gary Webster
AGS