

**CHARTER TOWNSHIP OF FENTON ZONING BOARD OF APPEALS
MINUTES FOR REGULAR MEETING OF AUGUST 28, 2018**

FENTON TOWNSHIP CIVIC COMMUNITY CENTER
12060 MANTAWAUKA DRIVE, FENTON, MICHIGAN
MEETING HELD AT FENTON TOWNSHIP CIVIC COMMUNITY CENTER

Chairperson Cady called meeting to order at 7:00 pm.

Present: Cady, Baran, Lorraine, Marko, Matta, Reid, Spear
Zoning Administrator, Piggott, and Recording Secretary, McDonald

Absent: None

PLEDGE OF ALLEGIANCE:

Chairperson Cady led the pledge of allegiance to the flag.

APPROVAL OF AGENDA:

Motion to approve the agenda as written

Motion by: Cady
Seconded by: Matta
All in favor

MEETING MINUTES: July 24, 2018

Motion to approve the minutes as presented

Motion by: Cady
Seconded by: Lorraine
All in favor
Motion carried

UNFINISHED BUSINESS

ZBA18-027 (1) Ghassan Saab, 3407 Torrey, Flint:

06-11-100-001, 06-11-504-009 & 06-11-504-010 2300 Sonora

Requesting 15 ft. front and 18 ft. 2 in. rear setback variances to build a house.

Secretary Reid reviewed the file. Ghassan Saab and John Costa, AIA Architectural Design & Consultation, PLLC, 417 Old Mill Dr., Flushing, were sworn in. Saab explained the history of the property since they purchased the former Lang's Marina property in 2006. He said they have combined three of the lots and redistributed them to make 2 building sites, with each building site having at least 100 ft. on the water. He explained the request for variances are the minimum necessary to construct two specimen homes, and are necessary because of the location of a private road that runs through the property. The request is to build in similar footprint of the other homes on the street. He added these proposed homes are set back further from the road and the water than many of the existing homes. Chairperson Cady called for public comments. Dane Farner, 2326 Cedar Pt./Sonora, stated concerns about self-created hardship because the road ran through the property prior to Saab's purchase of the land. He questioned the staking, stating that he could not tell where the proposed building footprints were located. Secretary Reid read letters from Tom and Peggy Smith, 2316 Cedar Pt./Sonora and William and Irene Richardson, 2316 Cedar Pt./Sonora, which indicated they were opposed to the variances being granted. Their concerns were the condition of the property and storm water runoff issues not being addressed. They said any hardship is self-created and there is enough land available to build without seeking variances. They also claimed that the variances requested are not the minimum necessary to be able to use the property and that the drawings and staking do not make it clear what and where they are planning to build. Also stated were concerns about the sight line. Matta stated this is an unusual piece of property and the

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developer is asking for minimum variances. He also said this will be the first step in cleaning up the property in order to make the proposed homes desirable for sale. Baran said it was clear to him where the building footprints were to be located and the actual building plans, rather the conceptual footprints, make it very clear what they are proposing. Lorraine agreed with both Matta and Baran adding there is no impact to the sight line for the existing structures.

Motion to approve 15 ft. front and 18 ft. 2 in. rear setback variances to build a house.

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Lorraine, Marko, Matta, Reid, Spear
Nays: Cady
Absent: None

Motion carried

ZBA18-027 (2) Ghassan Saab, 3407 Torrey, Flint:

06-11-100-001, 06-11-504-009 & 06-11-504-010

2300 Sonora

Requesting a 13 ft. 4 in. front and 22 ft. 9 in. rear setback variances and a variance from the requirement to have a minimum 4/12 roof pitch to a house. Ghassan Saab remained sworn in. He explained this is part two of the previous application. He noted the same issues exist but the shape of this lot made it more difficult to design an appropriately sized house and fit it on the lot with minimum variances. He said this is why they have decided on a more modern design for the structure and are asking for relief from the 4/12 roof pitch requirement. Chairperson Cady noted the previous comments are still relevant as are the letters. He then called for additional public comments. There were none. Matta repeated his comments from the previous case adding cleaning up the property would be better for the neighborhood. Spear said there is definitely a practical difficulty with this site due to the location of the road and the shape of this lot.

Motion to approve 13 ft. 4 in. front and 22 ft. 9 in. rear setback variances and a variance from the requirement to have a 4/12 roof pitch to a house

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Lorraine, Marko, Matta, Reid, Spear
Nays: Cady
Absent: None

Motion carried

NEW BUSINESS:

ZBA18-025 Jose Hernandez, 9 Emerald Pt. and Martin & Traci Lapa, 7 Emerald Pt., Linden:

Appeal of the Zoning Administrators decision to grant a sight line waiver for unit 8 of Emerald Pointe. Parcel 06-22-601-008.

Chairperson Cady explained that the Zoning Administrator, Doug Piggott, is present and he will tell the board why he determined that this property is eligible for a sight line waiver. Piggott explained his determination. First he determined that unit 7 was a lake lot using a process he has used since beginning work for the township. He extended the side lot lines of the subject parcel out into the lake. If one or both of those lot lines extended out into open water, rather than to the land on the other side of a channel, creek or stream, he considered it a lake lot. Because unit 7 was determined to be a lake lot, unit 8 had a sight line. Next he identified the sight line for unit 8 based on the location of the existing buildings on unit 7 and unit 9. He

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determined that almost all of unit 8 would encroach on the sight line. It was his determination that, although unit 8 was not on a traditional peninsula, its location in relation to the sight line was equivalent to a lot on a peninsula that extends closer to the water than lots on either side. Like a peninsula, enforcement of the sight line would have the effect of making unit 8 unbuildable and therefore was eligible for a waiver under Section 4.28. Baran asked if this method had been applied in other cases. Piggott said yes, in every case. Hans Rentrop of, Adkison, Need, Allen, & Rentrop, PLLC, 39572 Woodward, Suite 222, Bloomfield Hills, was sworn in. He indicated his firm is representing Jose Hernandez, 9 Emerald Pt., and Martin and Traci Lapa, 7 Emerald Pt. Rentrop referred to a letter written by Piggott dated July 7, 2018, in which Piggott states the property is on a peninsula. He said the term peninsula is not defined in the ordinance so he referred to Webster's definition as a property mostly surrounded by water. He said this property is not mostly surrounded by water; therefore, it is not a peninsula. He said that the granting of this waiver to allow the proposed structure to be built in the proposed location will substantially negatively impact unit 7 and unit 9 views of the lake. Rentrop claimed the owners of unit 8 erroneously assert that the 'building envelope' is identified in the Master Deed is limited to the white area shown on the site plan and identified as the unit area, however, the unit area is not defined in Master Deed, the Fenton Township Zoning Ordinance or the Condominium Act. He said there is no indication that construction is limited to the unit area. He claimed that the opposite is true, stating there are five provisions of the Emerald Pointe condominium documents, which indicate that construction would and could occur outside of the unit area. He elaborated on each of the five points as stated in a letter dated August 24, 2018. He said there is nothing in the Master Deed to support the assertion the home construction is limited to that area. He claimed that contrary to the unit 8 owner's assertion, the proposed construction could be moved to comply with the sight line requirements of the Zoning Ordinance. Reid asked if Rentrop felt that building outside the unit area would require an amendment to the Master Deed. Rentrop replied no. Baran asked whether Rentrop's clients were aware of the Master Deed governing the Emerald Pointe condominium prior to their purchases of units 7 & 9. He said he has to assume so, however, they felt the Township's sight line provisions protected them. Baran asked if Rentrop would agree that there are significant wetlands on this site. He responded yes, but they could be filled and the house could be moved closer to the road. George Rizik of, Rizik & Rizik Attorneys at Law, 9400 S. Saginaw, Suite E, Grand Blanc, stated he is representing the owners of unit 8. Rizik said the Zoning Administrator was correct in his determination. He claimed that contrary to Mr. Rentrop's statements, this is a Master Deed issue and an ordinance issue. He noted that the Township Planning Commission approved this site plan and the condominium documents. He said he was around and remembers the Planning Commission requiring that the building envelopes be defined as is required by the Condominium Act itself. He said the building area is critical on this unit because of the location of the flood plain and wetland boundaries. This building area was established in 1996. This building envelop was established to preserve the wetland and eliminate a risk for flood hazard. The wetland and flood plain boundaries are required to be shown on the documents that were reviewed and approved by the Township. Rizik said he does not believe the statement that this wetland can be filled. He said that would require a permit from the DEQ and it may be possible but there is no guarantee it would be granted. Rizik quoted section 4.28 of the Township Zoning Ordinance "This sight line provision may be waived if the applicant can demonstrate by clear and convincing evidence that the lot or parcel on which the structure or barrier is to be constructed is a peninsula, a point, a bay, or otherwise positioned differently, (relative to the lake), thereby making the enforcement of the sight line provision ineffective as a means of preserving a riparian property owner's reasonable view of the lake." Rizik stated that although Rentrop said this is not a peninsula by Webster's definition, it is otherwise positioned differently relative to the lake. He said Piggott was correct

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in his decision to waive the sight line because if the sight line provision were applied according to the ordinance the lot would not be a buildable lot due to the location of the wetlands and the flood plain. He added that was not the intent of the Township's Planning Commissions or it would not be shown on the site plan as a place with a building area. Rizik said it is the burden of the applicant to prove that Piggott's decision was arbitrary and capricious, which they have not done. Baran asked Rizik if it is his opinion that, were the structure to be built outside of the unit depiction, the Master Deed would have to be changed. Rizik said it would require approval. Reid asked the size of the proposed structure. Rizik replied the condominium restrictions require the homes to be a minimum of 3000 sq. ft. Baran stated there is a difference in the concept plans shown by the applicant when he asked for the waiver and the shape of the proposed concept shown tonight. Danny Neemer, 6140 Boulder Dr., Flushing, stated he had submitted a concept of a building that would fit in the unit area when he first approached the Township. Since that time, they have refined their plan to give an actual building footprint. He said he has done his due diligence and even had soil borings analyzed to ensure the structure could be built. He showed the test results to the board and explained that this is the only location on this unit where the house can be built. He added the house cannot be moved back closer to the road because there are high water table issues due to the proximity to the flood plain. He said he is not trying to do any harm to the neighbors and wants to live in harmony with them. He added if a building is not allowed in this area the lot is worthless. Marko stated concerns with the contemplation of filling wetlands. Baran said the Township approved this site plan years ago obviously realizing this is the only area for a building because of the location of the wetland and flood plain. Baran added if the owners of unit 7 and 9 had done their due diligence, it would have revealed this location for the building. He said the Zoning Administrator made the appropriate decision.

Motion to grant the appeal of the Zoning Administrator's decision.

Motion by: Cady
Seconded by: Matta
Ayes: None
Nays: Baran, Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: None

Motion failed

Motion to deny the appeal and uphold the decision of the Zoning Administrator.

Motion by: Cady
Seconded by: Lorraine
Ayes: Baran, Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: None

Motion carried

ZBA18-029 Ed Pinkelman for Roger Studley, 12175 Margaret, Fenton:

06-11-501-060

12175 Margaret

Requesting 33% lot coverage, 17 ft. 6 in. front yard setback and 9.8 ft. sight line variances to build a new house.

Secretary Reid reviewed the file. Ed Pinkelman, Pinkelman Custom Homes, 9150 Warwick Circle Ct., Grand Blanc, was sworn in representing Roger Studley who was present at the meeting. Pinkelman explained the front yard setback is greater than the garages on either side of this property. He noted there will be minimum impact, if any on the sight line. He said the owner had these plans drawn in 2002 and decided not to build until now. Pinkelman noted the

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lot coverage variance of 3% is the minimum necessary to build a salable house. Baran asked if Pinkelman filled out the paper work for the variance including whether he answered the five questions regarding how the application meets the criteria for a variances. Pinkelman said he did. Baran questioned how Pinkelman described how the request is the minimum necessary. Pinkelman said the owner intends to build a home comparable to other homes on the street that will appraise for enough to absorb the land cost. Baran asked why they needed the lot coverage to accomplish this. Pinkelman said downsizing to eliminate the 3% would require the entire plans be changed. Chairperson Cady called for audience comments. There were none. Baran stated concerns about the lot coverage and suggested the applicant reduce the size of the building to comply with the 30%. Matta agreed adding he did not have a problem with the setback and sight line variances.

Motion to approve 33% lot coverage, 17 ft. 6 in. front yard setback and 9.8 ft. sight line variances to build a new house.

Motion by: Cady
Seconded by: Baran
Ayes: None
Nays: Baran, Cady, Lorraine, Marko, Matta, Reid, Spear
Absent: None

Motion failed

Motion to deny 33% lot coverage, 17 ft. 6 in. front yard setback and 9.8 ft. sight line variances to build a new house.

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: None

Motion carried

ZBA18-030 Kellie Palm, 12210 Mantawauka, Fenton:

06-11-530-008

Requesting 5 ft. 3 in. height, 18 ft. front yard setback and 540 sq. ft. maximum allowable square footage variances to demolish the existing garage and build a new detached accessory building.

Secretary Reid reviewed the file. Kellie Palm was sworn in. She explained the request to demolish the existing detached garage and build a new garage with a utility room. The proposed new garage is set back 12 to 14 ft. from the road right-of-way, the right-of-way is another 10 ft. which will position the garage 22 ft. from the pavement which is consistent with other garages on Mantawauka. The additional square feet will allow for storage of a boat and other lake related equipment as well as their cars. She noted the house does not have an attached garage. Palm said they have been working with an architect to design an attractive building similar to other homes in the neighborhood. Palm said they want to keep as many of their items indoors as possible. Baran questioned placing a utility room in this building. Palm said that in order to get from the garage to a bathroom to wash up, you must cross the street and walk all the way through the house across white carpet. Baran asked if she planned to make the upper level a rental unit or guest room. She said that is not their intent. Baran said she must assure the board that this will not be converted into living space. Palm said it will not be used as living space. She added they would also like to have water on that side of the street for irrigation. Chairperson Cady called for public comments. There were none. Secretary Reid

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read letters from Robert Pattison, 12268 Windsor Bch., Damian Kudet, 12202 Mantawauka and Craig Schramm & Leslie Wizauer, 12198 Mantawauka, all supported the request. Spear stated a variance of 540 sq. ft. is excessive. Marko, Reid and Matta said this new garage will be an upgrade and it is similar to other garages across the street from the lake homes. Baran said that without an attached garage he understands the need for more storage. Lorraine agreed stating he did not feel the request was excessive.

Motion to approve 5 ft. 3 in. height, 18 ft. front yard setback and 540 sq. ft. maximum allowable square footage variances to demolish the existing garage and build a new detached accessory building.

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Lorraine, Matta, Reid
Nays: Cady, Marko, Spear
Absent: None

Motion carried

ZBA18-031 George & Tracy Pellett, 12199 Margaret, Fenton:

06-11-501-053

12199 Margaret

Requesting 4 ft. sight line variance to add to the existing covered porch/deck.

Secretary Reid reviewed the file. George Pellett was sworn in. He explained that he wants to add 4 ft. to the deck. He said the current deck is only 8 ft. wide, which makes it difficult to get around the furniture and impossible to access with a wheel chair. Chairperson Cady called for public comments. There were none. Secretary Reid read letters from June Wesch, 12195 Margaret, who supported the request and from Jim & Fern Root, 12205 Margaret, who opposed the variance stating it was excessive. Baran stated this request is minimal. Cady agreed adding the addition of 4 ft. will have no impact on views of the lake.

Motion to approve 4 ft. sight line variance to add to the existing covered porch/deck.

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Cady, Lorraine, Marko, Matta, Reid, Spear
Nays: None
Absent: None

Motion carried

ZBA18-032 Thomas Macksood, 12137 Margaret, Fenton:

06-11-501-071

12137 Margaret

Requesting 10 ft. rear and 3 ft. on each side yard setback variances to demolish the existing house and build a new house.

POSTPONED

ZBA18-033 Michael Schwab, 13254 Enid, Fenton:

06-14-577-046

13254 Enid

Requesting 13 ft. sight line, 2 ft. side yard setback and 2 ft. total 2 sides variances to add a porch roof to the existing house.

Secretary Reid reviewed the file. Michael Schwab was sworn in. Schwab explained his request to add a covered porch to the existing house. He noted this is to provide shelter from the direct sunlight and other elements, as well as add to the homes aesthetics and energy efficiency. Chairperson Cady called for public comments. There were none. Lorraine stated the roof

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structure and support system is substantial and it will slightly impact neighbors' views. Reid noted that some of the impact is from where the porch wraps around the side of the house. She added the sides of the proposed structure are not in the sight line. Spear stated the absence of neighbors at the meeting does not mean that they are not opposed. Schwab said he talked to his neighbors and they are in favor of the upgrade to the structure. Lorraine said the proposed addition does improve the aesthetics of the house.

Motion to approve 13 ft. sight line, 2 ft. side yard setback and 2 ft. total 2 sides variances to add a porch roof to the existing house.

Motion by: Cady
Seconded by: Baran
Ayes: Baran, Matta, Reid
Nays: Cady, Lorraine, Marko, Spear
Absent: None

Motion failed

Motion to deny 13 ft. sight line, 2 ft. side yard setback and 2 ft. total 2 sides variances to add a porch roof to the existing house.

Motion by: Cady
Seconded by: Baran
Ayes: Cady, Lorraine, Marko, Spear
Nays: Baran, Matta, Reid
Absent: None

Motion carried

PUBLIC COMMENT: 5-minute limit

ADJOURN: 9:15 p.m.

Chairperson Cady
Minutes Posted 09/11/18

Secretary Reid