

ACME TOWNSHIP
Zoning Board of Appeals Special Meeting
Wednesday, May 26, 2004 at 7:00 p.m.
6042 Acme Road, Williamsburg MI 49690

Meeting called to Order at 7:05 p.m. at 10387 Kay Ray Road

Members present: J. Kuncaitis (Chair), L. Belcher, P. Collins, N. Knopf, H. Smith

Members excused: None

Staff present: J. Hull, Zoning Administrator
S. Corpe, Recording Secretary (7:20 p.m.)

1. **Review and approval of the agenda, inquiry as to conflicts of interest:**
approved; none noted.

2. **On-site tour of 10387 Kay Ray Rd. by applicant Roger Wares on behalf of Glen Cavanaugh and pertaining to variance request 2004-5Z:** Mr. Wares stated that the owner of the lot would like to continue to use the existing home for the next year, but plans to demolish it and build a new home next year. He would like to construct a detached garage immediately, and feels that the best location on his property is in what the township defines as the front yard (between the road providing access and the house.) This is a waterfront parcel of land. Mr. Wares pointed out the stakes denoting the corners of the proposed structure placement. He stated that the entrance would remain unpaved and natural in nature. The Board viewed a drawing of the proposed structure, which is barn-like. Mr. Cal Carr, Mr. Wares' partner, mentioned concerns regarding the township's height restriction for accessory buildings (14') and how this dimension is measured (for a peaked roof, the average of the distance between ground and eaves on the front of the structure and ground and highest peak.) Mr. Carr noted that this dimension can be "played with" in ways that may make it a relatively meaningless requirement.

Belcher asked which elevation is the front of the accessory structure; it would be to the south. Knopf asked how many trees would be removed; about 10-12 pine trees would need to go. Smith asked why the structure could not be located on the portion of the property on the east side of Kay Ray Road; the applicant would prefer to have it as close to his other structures as possible. Kuncaitis asked if the structure could be moved to the midway point between the two lots under common ownership; the applicant is attempting to be considerate of his neighbor to the south, John Zaloudek, by keeping the structure more internal to his own property and away where the Zaloudeks would have to look at it. Belcher noted that the proposed location is only 20' from the neighboring property and 40' from the owner's driveway. He also asked about the width of the power line easement. The structure is planned to sit 20' away from this easement. Mr. Wares noted that the site of an old barn that was within the front yard is to become the site of a new drainfield for the house, The side and rear yards in relation to the existing house appear to be too small to accommodate the proposed structure.

Kuncaitis asked about plans for the home that will be built to replace the old one, and if the property owner considers the waterfront to be his front yard as many people do. The applicant plans to orient the house so that the "back" will face the road. It will have approximately the same footprint as the existing structure. The group looked at

the location of the common lot line on the south side of the subject property shared with the Zaloudek property. Kuncaitis stated that in his opinion, the truly buildable portion of the property is smaller than the site plan might lead one to believe. There is a significant slope on the bay side of the property. The side yard seems too small for the size of structure contemplated.

Meeting recessed at 7:32 p.m. so that the ZBA and applicant could return to the Township Hall for the balance of the meeting.

Meeting reconvened at 7:50 p.m. at the Acme Township Hall.

4. Correspondence:

- a) **Letter from Clyde H. Reed regarding variance application by James Nowland:** The board asked Hull to contact the applicant and see he they could be delayed in seeking a full survey as required at the last meeting, and come to the next meeting for further discussion.

5. Reports: None

6. Hearings:

- a) **Hearing for Roger Wares, 10255 White Birch, Traverse City, MI 49684, for a non-use variance of § 7.2.3(2), Accessory Buildings, which prohibits an accessory building in any front yard in a residential district, located at 10387 Kay Ray Rd:**

Public Hearing opened at 7:51 p.m.

A memo was received today from Roger Wares and Cal Karr, the applicants, dated May 22, 2004, which is included and incorporated by reference. Kuncaitis asked Hull and Corpe to confirm the method used to establish building height according to the Zoning Ordinance, which for gable roofs involves an average of the height from front grade to eaves and front grade to peak. The requested peak is 23' high with a sidewall of 9', for a 16' official height.

Mr. Wagner who lives on Kay Ray Road spoke to the ZBA while they were at the site earlier in the meeting; he could not come to the Township Hall because he does not drive much. He was concerned because he saw the name "Wares" on the application and wanted to ascertain that no structures on the property would be used for on-site car sales repair, apparently having the Wares used automobile dealership in mind.

Public Hearing closed at 7:56 p.m.

Knopf referred to page 4 of Hull's report and asked how the words *raison d'etre* are pronounced and what they mean (French for "reason for being.") One idea discussed on site would be to move the structure closer to the driveway; however this would necessitate removal of a large double-trunked tree. There may be room on the east to move the structure so as not to necessitate additional tree removal. There is a power line present, but moving the structure could actually make better use of the planned double-doors.

There is also a family pet buried on the property that would prevent moving the structure much to the south. Mr. Karr clarified that the entire structure will be a stained cedar and will not resemble a pole barn in any way. The structures being removed are being recycled to the fullest possible extent. Mr. John Zaloudek offered information about an individual who would be glad to take the wood from any trees that must be removed.

Belcher spoke to the roofline height variance, and the fact that if the roofline paralleled the short sides of the building rather than the long sides, perhaps the height variance wouldn't be needed. Kuncaitis feels that keeping the peak oriented as it is now will ultimately be less intrusive to the neighbors.

Collins asked if there are setbacks from a power line right-of-way. Kuncaitis said when he built he had to remain at least 15' from either side of the lines. Mr. Wares reports that you have to be at least 15' from the edge of the area cleared around the lines. Smith noted that all of the basic conditions and one special condition must be met in order to grant a variance, but it appears that Basic Condition D may not be met. Hull also interpreted that Basic Condition A may not be met. (Discussion about lakefront rule – want to retain ability to ask that building be 10' this way or 5' that way.) The ZBA felt that both A and D have been met.

Motion by Knopf, support by Collins to approve variance request #2004-5Z for placement of an accessory structure within the front yard of the property located at 10387 Kay Ray Road and to grant a 2' variance to the height of the structure as defined by the Zoning Ordinance (14' maximum height required, 16' allowed) on the condition that the structure be 15' from the clearing for the power line instead of 20' as depicted on the site plan and a minimum of 20' from the northerly property line, all Basic Conditions and Special Conditions A and B having been met. Motion carried unanimously.

- b) **Hearing for Mark Fogo, 4200 M 72 E, Williamsburg, MI 49690, for a non-use variance of § 7.4.1(4)b Business Districts (Signs), which prohibits off-site business signs, located at 4200 M 72 E:** Mr. Fogo and his Realtor, Ken Kleinrichert, were present in support of their application. Kuncaitis read the published hearing notice into the record. Mr. Fogo is seeking permission to place an off-site business sign for a property directly to the south of the Foamer's Car Wash on the car wash property to obtain exposure on M-72. Mr. Kleinrichert provided pictures of the carwash property. There is an existing service drive/easement to the southern property. The Fogos sold the car wash, and the new owner is unwilling to share the sign on the property he purchased, so the Fogos are seeking a sign on the easement. Future development plans for the southern parcel may include either business or high-density residential use, and a rezoning to one or the other designation in full (the southern parcel is zoned partially B-2 and partially R-3). It will likely be developed in common with the R-3 portion of the former movie theater property, which is adjacent to the subject property to the east. They would eventually like to interconnect to the town center

Public Hearing opened at 8:47 p.m.

Corpe mentioned that she had received a phone call from Greg Zarafonitis, owner of the property immediately adjacent to the west along M-72. Mr. Zarafonitis wanted to find out more about the application and what might result. He and Mr. Fogo have been in conflict in the past, as Mr. Zarafonitis is bothered by noise coming from the car wash, particularly late at night. Mr. Zarafonitis said he would have no particular concerns about the application unless it resulted in a second freestanding sign. Corpe noted that part of the ongoing disagreement between the two neighbors deals with a privacy fence required by the car wash Special Use Permit that has never been installed.

Corpe mentioned that a sign for a subdivision or similar development can have a sign only 16 sq. ft. and non-illuminated. A sign for a multiple family dwelling must be attached to the face of the structure. There have been situations such as Orchard Shores where a larger, lit sign was permitted by variance due to the high-speed nature of US 31. Because it isn't yet known what kind of development might occur on the southern property, Kuncaitis felt that it might be premature to make a determination. Mr. Kleinrichert asked for a determination now so that all parties to the property sale can feel comfortable about their rights; Corpe noted that the variance would expire in 6 months unless a sign were erected sooner as well.

Public Hearing closed at 9:00 p.m.

The board generally felt that the request is premature. Mr. Kleinrichert asked about the likelihood of the request being granted if the proposed development was commercial in nature. The board indicated that a freestanding sign for commercial use is not impossible. Kuncaitis still feels a decision would be premature because it is unknown as to what may occur on either parcel of land, and it might be that the two future uses will be compatible. The board recommended that the applicant retain rights to erect a sign within the access easement in their agreement with the potential property purchaser.

Based on discussion, the applicant chose to withdraw application #2004-6Z.

7. **Other Business: An interpretation of § 7.2.3(4) which states: “[Accessory buildings shall] not exceed one (1) story or fourteen (14) feet in height....”:** As previously discussed, our building height measurement as defined by the Ordinance relies largely on averaging the height of a structure from front grade to eaves and grade to peak. As an example, this could include a 28' tall A-frame home with eaves starting right at the ground. Corpe mentioned that this method of height measurement, along with an “or” based statement allowing homes to be 2 ½ stories tall OR 35' has allowed some homes of surprising stature to be constructed over the past two years. The Board felt that the requirements may not be serving us very well, particularly as we are within a snow belt and they might engender roofs that aren't steep enough to deal with snow loads. The ZBA would like this issue referred to the Planning Commission for further consideration and possible amendment.

Meeting adjourned at 9:15 p.m.