

ZONING BOARD OF APPEALS
MINUTES FROM MEETING ON 11/4/21

Present: ZBA members Ted Swanson, Matt Butler, Donna Romanak, Township Attorney Scott Graham

The meeting was called to order by Chairperson Matt Butler at 6:00 pm.

Public Comment: Six members of the Scott Lake Association were present at this meeting. Association president Frank Bell asked for clarification on the process for zoning variance requests and the legal basis for zoning ordinances. Township Attorney Scott Graham replied that the Township has been using the draft zoning ordinances for more than 10 years along with a Scott Lake zoning overlay that was never formally adopted by the Board of Trustees. The Township is now trying to follow the current zoning ordinances so the proper procedure is to apply for a zoning ordinance variance when proposed construction or use of property doesn't comply with the current zoning ordinances. Sections of our current zoning ordinances don't apply well to the Scott Lake area. The Township is aware that the zoning ordinances need to be updated. Scott asked the Scott Lake Association members for a list of the changes they want to see added to the current zoning ordinances. These suggestions would be submitted to the Township Planning Commission for their recommendations to the Board of Trustees. That Board will decide whether or not to adopt the proposed changes to the zoning ordinances. Donna Bell asked if the Township could intercede on their behalf with the Van Buren County Drain Commission with regard to the placement of drains and with the Van Buren County Road Commission on the placement of culverts along with help on blight enforcement. Scott answered that Deputy Felix Torres is already working on blight issues at a home in the Scott Lake area. The Township can only help to a certain extent with the Drain and Road commissions.

Ted Swanson made a motion to approve the minutes of the 10/18/21 ZBA meeting; motion seconded by Donna Romanak; motion passed.

A motion was made and seconded to close the public comment portion of this meeting and open the public hearing for the variance request made by David Aniol; motion passed.

David Aniol and his wife were present at this public hearing. They want to build a pole barn for storage of personal items on a lot they own that is zoned R-1 and is not contiguous to the lot they own on which their home is built. They have owned this home for 15 years and bought lots 27 and 28 this year. They walked the new property with former Zoning Administrator John O'Connell and got his verbal approval to build a pole barn on this property. The two lots have a combined width of 80 feet. The parcel number is 8-03-404-026-00. The property is located on Baylor Road and Michigan Avenue in Bloomingdale and is currently a vacant, wooded lot. The proposed pole barn would be the only structure on this lot. The pole barn cannot be built without a variance because it is not a principle permitted use in a R-1 zoning district. The land in question is in Scott Shores. The area is subdivided into lots that are much smaller than required based on the zoning ordinance. The land is platted based on the terms of the Plat Act. The fact that the area is

subdivided means that the subdivision documents control over the zoning ordinance on the issues lawfully covered by the subdivision documents. Those documents were approved by the Township and filed with the State. The subdivision documents establish lot sizes. However, if the documents are silent on an issue or if the documents try to unlawfully control an issue (which is not an issue here), then the Township Zoning Ordinance applies. In this case, the use of the property is controlled by the ordinance. The ordinance provides, in part, for principal uses and special uses. Principal uses are detached one-family dwellings as defined in Article X which meet all applicable requirements and specifications of the Arlington Township Construction Code and accessory uses and structures. Special uses (Article XIII) include houses of worship, parish houses, convents; educational institutions both public and private; public and private recreation uses such as parks, playgrounds, golf courses, athletic fields, stadiums, and community centers; governmental buildings, libraries, museums, public utility buildings, telephone exchange buildings, fire stations, gas regulator stations, and cemeteries. The ZBA must look at the zoning ordinance in order to determine whether a variance is required. The applicant asks for permission to build a pole barn as the only structure on a lot zoned residential (R-1). This is not a permitted use on the property; construction of the building violates the ordinance. The request seems to be based on the following facts: the applicant owns a single family residence in Scott Shores; the applicant wants to build a pole barn on a different lot in Scott Shores; the two lots are not contiguous; and the applicant's lake lot is not large enough to hold the pole barn; the pole barn will be used to store items used at the residence and on the lake; before purchasing the lot the applicant sought information about the applicant's right to build the pole barn; the zoning administrator apparently approved the construction which should not have occurred; the zoning administration has apparently approved several similar requests regarding pole barns. The applicant and others have indicated they believe the pole barn is an accessory use. Article X of the ordinance provides in part; "accessory use, building, or structure is a use, building, or structure which is clearly incidental to, customarily found in connection with, subordinate to, and is located on the same zoning lot as the principal use to which it is exclusive." Here the buildings are not on the same zoning lot so the accessory building structure does not apply. The request to build the pole barn cannot be granted by the Township based on the provisions of the zoning ordinance. This takes the ZBA to the variance process using competent, material, and substantial evidence. This is a request for a use variance. A use variance is appropriate only when the property owned will suffer unnecessary hardship if the variance is not granted. The variance may not alter the "essential character" of the land and the community. The variance may not be contrary to the public interest. The variance must be evaluated based on an objective standard. The property here is platted into lots that seem to be reasonable for a lake setting. The spirit of development in the area supports the variance request. The ZBA would be justified in finding that the owner/applicant would be subjected to "unnecessary hardship" if the owner is not allowed to highlight the use of the lake lot by building a pole barn on a lot located off the lake. The situation might be different if the request was to build on a lake lot. It also appears that the applicant acted innocently in relying on erroneous information from the zoning administrator regarding the situation. Substantial and material evidence exists supporting the variance request. If the ZBA disagrees with any of these points, it is free to determine that the variance is not appropriate. Ted Swanson made a motion to grant the

variance request allowing the applicant to build a pole barn structure as the sole structure on a lot in Scott Shores zoned R-1 and subject to the record plat documents and to approve a request for a variance fee waiver; motion seconded by Donna Romanak; motion passed.

This meeting was adjourned at approximately 7:20 pm.

Respectfully submitted,

Donna Romanak, Secretary