

WHITE LAKE TOWNSHIP
ZONING BOARD OF APPEALS

January 26, 2012 at 7:00 p.m.

7525 Highland Road
White Lake, MI 48383

Ms. Spencer called the regular meeting of the White Lake Township Zoning Board of Appeals to order at 7:00 p.m. and led the Pledge of Allegiance. Roll was called: Mr. Artinian was absent.

ROLL CALL: Robert Artinian – Vice Chairperson - **Absent**
Mike Lanthier
Gail Novak-Phelps
Linda Pearson - Secretary
Josephine Spencer - Chairperson

Also Present: Sean O'Neil, Community Development Director
Jason Iacoangeli, Staff Planner
Lynn Lindon, Recording Secretary

Visitors:2

Approval of Agenda:

Mr. Lanthier moved to approve the agenda as presented. Ms. Novak-Phelps supported and the MOTION CARRIED with a voice vote. (4 yes votes)

Approval of Minutes:

- a. Minutes of December 15, 2011

Ms. Novak-Phelps moved to approve the minutes of December 15, 2011 as presented. Ms. Pearson supported and the MOTION CARRIED with a voice vote. (4 yes votes)

Old Business:

File No. 11-013 (Tabled from 12/15/11)
Applicant: F.D. Stella Alpine Valley, Inc.
700 Fenkel
Detroit, MI 48238
Location: 6685 Highland Road, identified as 12-20-276-013
Request: Variance to Article 6 for lot width, lot area, ant to Article 4.16 for Frontage.

Ms. Spencer noted for the record that 26 property owners within 300 ft. were notified of the request. There were no letters received in favor or opposition, and one letter was returned undeliverable by the US postal service.

Mr. Iacoangeli gave a brief history of the case and noted this was discussed and tabled at the last meeting. He recapped that the total parcel is 4.85 acres; the minimum lot size of the proposed parcel would need to be 1 acre with a required lot width of 200 ft., but he noted that the entire parcel only has an access easement off M-59 through a restaurant parking lot. The main issue deals with the septic system for the motel. Based on the proposed split, the septic field would be located off the site that is being split. This is problematic because the septic field has to be all under one parcel and one owner.

In order to grant the variances needed to split into a 1-acre parcel, the septic field has to be resolved by either connecting the building to the sanitary sewer system, or the property needs to remain as it is. The motel has a valid permit from the Oakland County Health Department and if the parcel remains whole, there would not be an issue.

Chris Rickard of the White Lake Motel Group, and Andrew Richner of Clark Hill were present to address questions and concerns from the board members.

Mr. Richner indicated that the property was acquired in 1989. At that time, Parcel A and Parcel B existed. Parcel C, where the motel sits, was conveyed to the motel owners in 1997 by virtue of a contract. There has been an issue with this property with taxes, etc. and the owner of the property passed away last year. His company was asked by the estate to apply for the land division, at which they did in June 2011. The township attorney has stated that the property division does not conform to the ordinance and his opinion indicates the central issue is with the lot size, or .84 acres.

Mr. Richner argued that the ordinance that existed in 1997 did not have such a requirement for minimum lot size and they are willing to convey additional property with the motel owner to make up the difference of .16 acres.

Mr. Richner continued by noted that they haven't analyzed where the septic field is located and the value of this property doesn't justify spending money to build a new sewer system, etc. However, they could handle this issue by providing the right for the hotel to use the septic field. They would enter into an agreement or record an easement if necessary. They are not changing anything; they just want to divide the property and will conform to any rules or laws from the county health department and if the county were to require a connection to the sewer system, they would have to comply.

Mr. Iacoangeli referenced Article 2 of the Oakland Health Department Sanitary Code which states they could not have an offsite system not could they operate that use on 1 acre.

Mr. Richner argued that this case would not be before this board if they weren't here for the land division. They are subject to county and state law, whether the parcel is divided or not. He feels they have a right to develop the property assuming it conforms to state, county and township requirements.

Mr. O'Neil noted that any further building of the site would create a non-conformity. There would also be the issue of emergency vehicles accessing the site and this would become a health, safety and welfare issue.

Mr. Richner indicated that when Parcels A and B were divided with the county, the township decided at that time it was acceptable to allow the back lot to exist and have access to that lot by easement. Mr. O'Neil noted that Parcel C does not exist and any development on Parcel B would

be held to today's standards. The applicant has established the ability to use and operate Parcel B as a business, but it is not a reasonable application today of the 1989 Zoning Ordinance.

Ms. Novak-Phelps made a motion to remove this case from the table. Ms. Pearson supported and the MOTION CARRIED with a unanimous voice vote. (4 yes votes)

Mr. Iacoangeli noted that the ZBA could take into consideration any of the variances granted be conditioned that either there be a public utility connection or a sign-off from Oakland County Health Department before the township would do a split of any kind, and a letter from the sanitarian would also be needed to make a determination of their laws. Mr. O'Neil concurred.

Ms. Pearson stated that her concern from last meeting was that there was a recording with Register of Deeds at the county, but not within the township. She is in favor with Mr. Iacoangeli's recommendation.

Mr. Richner argued that if they can't acquire the property without acquiring rights to use their property, the value of the property would be nothing. They are asking for a variance to 4.16 because they don't have road frontage.

Mr. O'Neil noted that if the ZBA were to grant that variance request, it would be magnifying or expanding on a non-conforming situation. Ms. Novak-Phelps added that this is a hotel and depending on the intensity of what could be developed on a new parcel concerns her. This would definitely become a health, safety and welfare issue.

Mr. Richner stated that they could only do what they have a legal right to do. Parcel A has a legal easement and they can do things with Parcel B by put in wider road, etc. They are relying on the township's legal opinion and he doesn't see where the township attorney made any reference to the frontage requirement. Mr. O'Neil referenced Section 4.41, which clearly states the 200 ft. frontage requirement.

Mr. Richner stated he wants to come to a plan that they can accomplish. They want to resolve some of these outstanding issues pertaining to acreage, septic and addressing a road on their property.

Mr. O'Neil indicated that the property was not conveyed properly in 1997 and the applicant is asking the ZBA to bury its ordinance to the detriment of the public so they can finish their business deal.

Mr. Iacoangeli indicated that the ZBA has 2 options: (1) to grant the variance requests contingent on a utility connection or a sign-off from the county, and a deed restriction for the remaining 4.1 acres that it cannot be developed until the 200 ft. road frontage is established; or (2) convey all 4.85 acres to the motel owner and she continues to operate as she does today. He added that there is available frontage on Nordic Drive that could be purchased. The applicant could hire a design team to make the property function the way it should.

Ms. Spencer opened the discussion for public comment, but none was offered. The public hearing was closed at 7:48 p.m.

Mr. Richner responded that if the ZBA makes this contingent upon acquiring property they don't own, the price tag would go up. Mr. Iacoangeli explained that there is already a use on this land and the township can't have a motel operating and also have a potential development.

Ms. Novak-Phelps indicated that the variances that typically come before this board are requests to build something. This particular request is to fix a problem that is not the township's problem. The applicant did not properly split this land with the township.

Mr. O'Neil reiterated that this parcel has limited value because it's non conforming. If this goes away, the property is valueless. The applicant is asking for 2 new parcels that only have an easement. Mr. Iacoangeli noted that it would appear this is becoming monetary and the ZBA cannot consider monetary reasons when granting variances.

Ms. Pearson moved to grant the requested variances subject to:

- 1) A utility hook up, or that the Oakland County Health Department states that the 1 acre parcel will work with the existing septic;
- 2) That there be a deed restriction on the newly created Parcel B to restrict development of that parcel until improved road frontage per the zoning ordinance is met.

Ms. Novak-Phelps supported.

After continued discussion on the motion it was decided to address each variance request separately. Ms. Pearson withdrew her motion and Ms. Novak-Phelps supported.

Variance #1: Mr. Lanthier moved to approve a 0.16-acre variance to the required 1-acre for an end result of 0.84 acres. Ms. Novak-Phelps supported and the MOTION FAILED with a roll call vote: Novak-Phelps - no; Lanthier - no; Spencer - no (she doesn't want to create more of a non-conformity); Pearson - no. (4 no votes)

Variance #2: Mr. Lanthier moved to approve Required Lot Width from Article 6. Ms. Novak-Phelps supported and the MOTION FAILED with a roll call vote: Pearson - no; Spencer - no (she doesn't want to create additional non-conformity); Novak-Phelps - no (for the reasons stated); Lanthier - no (for the reasons stated).

Variance #3: Ms. Pearson moved to approve a 200 ft. variance to Section 4.16 Frontage from the required 200 ft. frontage for an end result of 0 with the following restrictions only to the proposed Parcel B:

- 1) That there be a utility hook up, or a sign-off from Oakland County Health Department stating that the 1-acre Parcel C (or larger if required) will work with the existing septic system;
- 2) That there be a deed restriction on the newly created Parcel B to restrict development of that parcel until improved road frontage per the zoning ordinance is met.

Ms. Novak-Phelps supported and the MOTION CARRIED with a roll call vote: Spencer - yes (she feels that Parcel C that houses the motel is a legal non-conforming and deed restrictions would not affect this, and this may rectify the problem that has been created with this parcel years ago but wasn't followed through to township standards); Pearson - yes (for the reasons stated); Novak-Phelps - yes (for the reasons stated); Lanthier - yes (for the reasons stated). (4 yes votes)

Other Business:

- a. Election of Officers

Ms. Novak-Phelps moved to elect as Ms. Spencer Chair, Mr. Artinian as Vice Chair and Ms. Pearson as Secretary. Mr. Lanthier supported and the MOTION CARRIED with a unanimous voice vote. (4 yes votes)

Mr. O'Neil announced that Mr. Lanthier has resigned from the ZBA and tonight would be his last meeting. He thanked Mr. Lanthier for his service to the ZBA for many years.

Next Meeting Date:

- a. February 23, 2012

Adjournment:

Ms. Novak-Phelps moved to adjourn the meeting at 8:52 pm. Ms. Pearson supported and the MOTION CARRIED with a unanimous voice vote. (4 yes votes)

DRAFT