

Evangeline Township Planning Commission
02476 Wildwood Harbor Road, Boyne City, MI 49712
February 15, 2022, Regular Meeting

Approved: April 19, 2022

1.0 Call to Order and Roll Call:

Meeting called to order at 5:33 p.m. by Chair Cortright

Roll Call:

Present: Chair, Rod Cortright; Vice Chair, Steve Smith; Member, Jeff Langhart

Excused: Secretary, Linda Fry; Member, Larry Taylor

Staff: Zoning Administrator, Scott McPherson; Recording Secretary, Sara Christensen

Guests: Township Attorney, Peter Wendling; Kevin Hart, architect and Greg Lee from Shore Stone Custom Builders (Representatives for Doran property); Joe Lucier and Kevin, builders from Waterfront Property Management (Representatives for Ayres property); and Mr. & Mrs. Ron Ottney with legal representative Jack Turner.

2.0 Approval of Meeting Minutes: Minutes from the January 18, 2022 regular meeting were reviewed. Motion to approve the minutes as presented by J. Langhart, seconded by Rod Cortright: vote all ayes, motion carried.

3.0 Hearing Citizens Comment-None

4.0 Unfinished Business

4.1 Site Plan Review: Doran – 04781 Ellis Road – Walloon Lake District

Scott McPherson noted tonight's discussion is a continuation of the Planning Commission's review begun on January 18, 2022 for the Doran property. He referenced several documents received since the last meeting included in tonight's agenda packet and noted one outstanding item not received is a certified survey.

Representatives for the Doran property were invited to speak. Kevin Hart, architect, shared an oversized drawing and noted items (driplines, setbacks, shoreline etc) in question at the last meeting. He answered questions from the Planning Commission and noted that the property will be staked by a surveyor and will assure all measurements are correct. He noted that all landscaping (existing trees and foliage) will remain and anything added will be on the Township approved list. Jeff Langhart asked builder, Greg Lee, where the crew will be parking during construction. Greg is planning for them to park in front of garage, and assured Mr. Langhart that no crew members will be parking on the road. Mr. Langhart offered to visit during construction to review measurements (drip lines, etc). Greg Lee noted that he will get ahold of the Zoning Administrator when construction begins.

Motion by J. Langhart to accept the findings of fact as presented, seconded by S. Smith: vote all ayes, motion carried.

Motion by S. Smith based upon the approved findings of fact to approve the site plan as presented contingent upon receiving a certified survey and satisfactory review of the dripline versus lot line setbacks, seconded by J. Langhart: vote all ayes, motion carried.

5.0 New Business

5.1 Site Plan Review: Ayers – 04677 Ellis Road – Walloon Lake District

Scott McPherson referenced the pre-application conference in December 2020 with applicant Jennifer Ayers, to discuss the proposal to add a second story Attached Dwelling Unit (ADU) onto an existing garage located at 4677 Ellis Road. The Site Plan Review Application included in tonight's meeting

packet was received on January 24, 2022. It was discussed that this parcel is located in the Walloon District and is a nonconforming lot of record and has an existing class B nonconforming home and class A nonconforming detached garage on the property. Also noted was the requirement of a natural vegetation buffer strip of 50' deep across the full width of the lot due to the parcel being located within a steep slope area. The existing waterfront area is currently a maintained lawn area with five (5) trees. The submitted application includes the proposed landscape planting areas and identifies the trees and plants to be used. The applicant is requesting an extension of time (7-10 years) for complete installation of the natural vegetation buffer strip, due to financial hardship. Mr. McPherson noted a documented medical condition (Attachment A – Letter from Mary Ackerley MD) Ms. Ayers suffers from that has led to the construction project presented tonight.

Joe Lucier and Kevin, builders from Waterfront Property Management attended tonight to answer questions on behalf of the property owners. The Planning Commission's first question was, "who is the property owner?" Mr. Lucier stated that he believes Jennifer Ayers, a brother, and her mother are all owners of the property. It was noted that this needs to be clarified before final approval can be granted as official documents will need to be signed.

Planning commission discussed the requested extension of time to install the waterfront buffer strip but were at an impasse regarding an appropriate amount of extended time to approve. The concept of requiring a schedule of plantings starting in spring of 2024 and progressively being completed over the next five (5) years was discussed. Chairman Cortright stated that the day construction begins, the 50 foot buffer strip will no longer be disturbed including no lawnmowing, no spraying, no removal of natural vegetation, etc.

Motion by S. Smith to accept the findings of fact as presented with consideration for Section 3.06.B.4 planting of the Natural Vegetation Waterfront Buffer Strip, seconded by J. Langhart: vote all ayes, motion carried.

The Planning Commission summarized the following points from tonight's discussion and stated that it will be best to get further clarifications from the applicant before moving forward.

- Require a schedule of incremental planting over five (5) years starting in spring 2024 (i.e. 10 feet of plantings per year starting at waterfront);
- Identification of person(s) responsible for ownership of the property;
- An agreement to leave the 50 foot buffer strip undisturbed once construction begins; and
- Permission for Zoning Administrator to conduct annual inspections of waterfront buffer strip.

This project will be added to the March meeting agenda if the applicant is ready.

5.2 Request for Modification of Private Road Standards: Ottney

Scott McPherson stated that Ron Ottney is here tonight requesting modification of the private road construction standards for a private road that would serve six (6) or less residential parcels. He noted the Evangeline Township Private Road Ordinance Section 5.02 Specific Standards outlines construction standards required for private roads specifically subsection (A)(4) states "no portion of the road grade on curved sections of a private road shall exceed 7%". Currently, portions of the curved sections of the road in question have grades of 10%. Mr. McPherson noted that as detailed by meeting minutes included in tonight's agenda packet, Mr. Ottney has been before the Planning Commission four other times since 2010 regarding an access driveway/private road for this property. Tonight, Mr. Ottney is requesting a modification of the private road ordinance standards to allow the existing grades be used for a private road that would serve five (5) residential parcels.

Chair Cortright clarified for Mr. Ottney that the Ottney property was never granted a private road; however, a private driveway was approved for access to a primary dwelling unit and an accessory dwelling unit. Mr. Ottney noted that it is difficult to divide the property into multiple lots. Mr. Ottney's attorney, Jack Turner, stated that they are here tonight going through the process and making sure they understand.

Chairman Cortright opened discussion to public comment.

Mr. Ottney shared a brief history of purchasing the 23 acres in 2009 and the due diligence he performed with the intent to build multiple homesites in the future. He originally hired Furgeson & Chamberlain to design a driveway and they led him to believe that he could construct a 16 foot driveway and he would only need to go back and pave it. Mr. Ottney broke ground in 2015 on their current residence, they moved in full-time in 2018, and they have not experienced any driveway run-off. They would now like to build a new home for their family and sell the home they are currently living in. In the future, they would like to build out four (4) additional lots. Mr. Ottney referenced a topographical study by Benchmark Engineering that leaves no other options for the driveway.

Chair Cortright shared the Planning Commission's experience with similar properties and noted there are options like installing a retaining wall (Belford property 20 years ago) for installing a private road that meets the standards. He also referenced text from Mr. Ottney's report from Benchmark Engineering that stated a road could be constructed on the property that meets the standard. Mr. Turner, Mr. Ottney's attorney, stated they are here tonight to see what he can do versus what can be done with a variance that makes more sense.

Planning Commission member, Jeff Langhart asked for clarification on what section of the driveway would need to be paved. Chair Cortright stated that due to the property being in an area of steep slopes, the entire driveway would need to be paved. Mr. Ottney asked if a new permit would need to be obtained. Chair Cortright stated that "yes, division of lots needs to meet Zoning Ordinance standards".

Chairman Cortright closed discussion to public comment and stated that Mr. Ottney and his attorney will have a chance to speak again before a motion is made.

Chair Cortright reminded the Planning Commission that all five standards to be considered need to be met in order for a variance to be granted. Township Attorney, Peter Wendling, noted the following exhibits to be considered while making a determination on the five standards:

1. Evangeline Township Master Plan
2. Evangeline Township Zoning Ordinance
3. Evangeline Township Private Road Ordinance
4. Site Plan Review Application from Ronald Ottney on 1/26/22 with notations
5. Memorandum from Benchmark Engineering dated January 18, 2022 with Road Concepts
6. Forestry Report submitted by Mr. Ottney
7. Plat Book exhibit
8. Evangeline Township Contour/Topography Map

The Planning Commission then deliberated over the following five questions from Section 9.07 regarding dimensional variances:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.

Chairman Cortright noted that there are more than 20 other properties in the Township with similar topography. He said a steep slope map of the Township (Exhibit: Evangeline Township Contour/Topography Map) would show that this is not the only parcel with this topography, so steep slopes are not unique to this property. Mr. Langhart noted his feeling that each property is unique; therefore, this property is unique.

THE BOARD FINDS: Cortright and Smith find that this standard has not been met due to the fact that other properties in the Township have steep slopes; Langhart find this standard has been met due to the fact that the property is unique. (See Exhibits 2, 3, 4, 5 and 8.)

2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created). If a variance is requested from the slope regulations of this Ordinance, the need for the requested variance shall be deemed self-created if the present lot on which the variance will apply was created after May 29, 2008 and an area on the lot that existed prior to the creation of the present lot permitted development in full compliance with the slope regulation of this Ordinance.

THE BOARD FINDS: this standard is met due to the fact that this property existed with steep slopes (Exhibit: Plat Book 2006) before it was purchased by the Ottney family. (See Exhibits 3, 4, 5, 7 and 8.)

3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.

Chair Cortright read allowed the allowable uses in this district (Exhibit: Evangeline Township Zoning Ordinance Section 5.08.2) and the Private Road Ordinance in regards to slope. Also noted was a letter from Mr. Ottney's engineer (Exhibit: Memorandum from Benchmark Engineering dated January 18, 2022) outlining three (3) driveway options. The board also noted that the property is currently being used as a single-family residence.

THE BOARD FINDS: that compliance with regulations is not preventing the owners from using their property for a permitted purpose. (See Exhibits 1, 2, 3, 7 and 8.)

4. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.

Chair Cortright stated that applicants in similar situations (Belford property) in the past have met this standard and as noted in Mr. Ottney's engineer letter (Exhibit: Memorandum from Benchmark Engineering dated January 18, 2022), there are options for constructing a private road that meets the Zoning Ordinance standards.

THE BOARD FINDS: that granting a variance is not necessary to provide justice to the applicant. (See Exhibits 2, 3, 4, 5, 7 and 8.)

5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District.

THE BOARD FINDS: that the requested variance will not cause an adverse impact on surrounding property. (See Exhibits 1, 2, 3, 4, 5 and 8.)

Chairman Cortright opened discussion for public comment.

On behalf of Mr. Ottney, Mr. Turner noted rebuttals for the following items: regarding standard #1, he questioned the percentage of other parcels in the Township that have this unique topography and stated that he isn't sure what percentage qualifies as unique; regarding standard #3, he stated that even though there are identified options for building a private road on the property that meet the standards, it is subjective whether tearing apart the property to build a road is unnecessarily burdensome; and regarding standard #4 he stated that comparing this request to only one other private road in the entire Township isn't "substantial" as it is unknown if the conditions on that property are the same as the conditions on this property. Mr. Turner questioned what is meant by justice for the community and stated that granting this variance could be beneficial to the property owner and community.

Jeff Langhart asked if emergency vehicles can use the driveway. Mr. Ottney stated that a fire truck has navigated this driveway. Chair Cortright noted that there is another private road in the Township at the Hawkridge development.

Chairman Cortright closed the meeting to public comment. Brief discussion took place amongst the planning commission.

Based on the findings of fact and all exhibits on record, motion by J. Langhart, to deny the variance request by Ron Ottney, seconded by S. Smith, all ayes, motion carried.

6.0 Reports & Communications-None

7.0 Planner/Zoning Administrator Report

Scott McPherson shared that he was contacted by Carrie May PE who is representing Mr. Habasco, and anticipates they will be requesting a pre-application meeting.

8.0 Next Meeting: The next meeting of the Planning Commission is scheduled for March 15, 2022, at the Evangeline Township Hall at 5:30 p.m.

9.0 Adjournment: Meeting adjourned at 7:45 p.m. by Chair Cortright.

Submitted By:



Sara Christensen, Recording Secretary