

CLINTON TOWNSHIP BOARD OF APPEALS

REPORT OF MEETING
WEDNESDAY, OCTOBER 21ST, 2020

PARTICIPATING: Michael Deyak, Vice-Chairperson
Robert M. Campbell, Secretary
David Merrill
Kenneth Pearl

ABSENT: Francis Marella, Chairperson (Excused)
Ronald DiBartolomeo (Excused)

STAFF: Bruce Thompson, AICP, Director
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

The meeting was called to order at 6:30 p.m. by remote participation via teleconference, and the Pledge of Allegiance was recited.

APPROVAL OF AGENDA

Mr. Campbell stated they have four items, one of which he anticipated will generate significant discussion. He proposed moving that item to the last of the four items to be discussed this evening.

Motion by Mr. Campbell seconded by Mr. Pearl, to approve the agenda, moving Item #2 to follow Item #4. Roll Call Vote: Ayes – Campbell, Pearl, Merrill, Deyak. Nays – None. Absent – Marella, DiBartolomeo. Motion carried.

Mr. Deyak noted there are only four members present this evening, and in order for an item to be approved, it needs four votes in favor, so he will be asking each petitioner before their agenda item as to whether they wish to proceed or have their item postponed to the next meeting, when they hope to have more members present.

Mr. Deyak questioned whether a 3-1 vote on a motion would result in a denial and a rehearing at the next meeting.

Mr. Campbell replied the motion on a 3-1 vote would be denied, and the request would have to be heard again.

Mr. Deyak questioned whether the petitioners would have to pay to have their request reheard.

Mr. Thompson replied no.

Mr. Deyak announced that this meeting is being held virtually via GoToMeeting. As a result of the coronavirus/COVID-19 pandemic, Public Act 228 of 2020 MCLA 15. 263, Section 3a provides authority authorizing remote participation in public meetings in order to avoid person-to-person contact. A dedicated email address has been established directing your emails to Zoning Board Members which allows them contact via email to provide input and ask questions regarding agenda items prior to the meeting. He advised the email is zba@clintontownship-mi.gov. Throughout the meeting and on agenda items, emails relating to the specific agenda item will be read prior to the Zoning Board voting on each agenda item. Following consideration of all of the agenda items, persons who have connected remotely will be permitted to speak, adhering to existing rules of participation.

Mr. Deyak addressed the procedure related to public comment. The Chairperson will acknowledge all persons wishing to address the Board during the public comment period, and they are to provide their name and address. Comments will be limited to three (3) minutes, and comments must be confined to Zoning Board of Appeals business, being topics over which the Zoning Board of Appeals has authority and which involves Zoning Board of Appeals matters. Should the Board decide that a response to a specific question raised by persons in that Public Comment section is needed, they shall refer the questions to the Planning & Community Development Department Director or his designee for review.

Mr. Deyak explained that the Board of Appeals functions as a quasi-judicial body with specific powers and limitations, as outlined in various sections of the Zoning Ordinance and state statutes. He noted the Zoning Ordinance sets the standards the Board of Appeals must use in reaching any decision, and once the decision of the Board of Appeals becomes final, only the courts can modify or reverse that decision. He stated his board is not empowered to change the terms or intent of an ordinance. Anyone who wants to amend an ordinance must petition the Township Board of Trustees.

Mr. Deyak explained that before a variance can be granted, certain requirements must be satisfied: 1) Practical difficulty must be demonstrated; 2) Whether strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for permitted purpose or would render conformity unnecessary and burdensome; 3) Whether a variance would do substantial justice to the petitioner as well as to other property owners in the district or whether a lesser relaxation would give substantial relief and more consistent with justice to others; and 4) The plight of the owner is due to unique circumstances of the property.

LOT 118, JUSTIN ESTATES SUBDIVISION, LOCATED EAST OF JULIE COURT, NORTHWEST OF JULIE DRIVE, ADDRESSED AS 41337 JULIE COURT (PARCEL #16-11-08-378-028)

- **APPEAL: SFR – JULIE COURT, 41337**

FILE #20-6957: PETITIONED BY MR. JAMES HALL, FUNSPACE DIRECT LLC

Mr. Campbell summarized the variance being requested. He advised that notice of this public hearing was issued by regular mail to 47 owners and/or occupants of property located within 300 feet of the land in question, with none of those returned as undeliverable. There were no emails or written replies received as of late this afternoon.

Mr. Thompson read an email that was just received from the following:

Ms. Mary Gagnier, 41294 Lore Drive – expressed her opposition to the variance request; should have to comply with ordinances.

Mr. James Hall, employed by Temo Sunrooms/ FunSpace Direct, LLC, 20400 Hall Road, Clinton Township, Michigan 48038, replied to inquiry that they would like to proceed this evening with their request. He stated this is a variance request for 41337 Julie Court, adding that they would like to construct a 10-foot by 20-foot patio cover over an existing patio. He stated they are not going to go outside of the existing envelope of the house. They have an irregular-shaped lot because they are on a cul-de-sac, so the far left corner is 36 feet from the property line, but the street to the south is an “s” shape, bringing it to about 26 feet from the edge of the right side of the patio they are proposing to cover, so they are seeking a 9-foot side yard setback variance. He stressed the hardship is the irregular shape of the lot, and other people in the existing area do not have this problem because their lots are square. He did not feel it causes a great encumbrance, site problems, or congestion for the neighbors or the neighborhood. He explained the homeowners are older and he did not feel there will be any noise issues. He commented there was some reference to a deck, and he clarified that there will not be a deck but it will be a patio cover over an existing cement slab. He did not feel it will violate the intent of the ordinance because if they had a regular-shaped lot, they would not be making this variance request. He anticipated it will add value to the property, and it will escalate the values of the surrounding properties.

Mr. Pearl stated he can understand that the shape of the lot creates a hardship. He noted that since it does not go beyond the back of the house and it is not a deck but just a patio cover, he is in favor of granting the variance.

Motion by Mr. Pearl, seconded by Mr. Campbell, with reference to File #20-6957 and application from Mr. James Hall, of FunSpace Direct, LLC, 20400 Hall Road, Clinton Township, Michigan 48038, for variance to Clinton Township Planning and Zoning Code, Chapter 1292.01, Land Use Regulations, Schedule of Regulations Limiting Height, Bulk, Density and Area, concerning Lot 118, Justin Estates Subdivision, located east of Julie Court, northwest of Julie Drive, addressed as 41337 Julie Court (Parcel #16-11-08-378-028), that variance be granted to permit the construction of a 10-foot by 20-foot covered porch addition to the rear of a single-family home in the R-4 One-Family Residential

District, being 26 feet from the rear lot line, which is 9 feet less than the minimum required 35-foot setback; further, this grant of variance is based on claimed practical difficulty being the irregular shape of the lot; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances.

Mr. Deyak opened the floor for any additional comments, but no one spoke.

Mr. Thompson stated there were no further emails received from the general public.

Roll Call Vote: Ayes – Pearl, Campbell, Merrill, Deyak. Nays – None. Absent – Marella, DiBartolomeo. Motion carried.

LOT 13, COULON FARM SUBDIVISION, BEING 0.43 ACRE FRONTING THE WEST LINE OF JAMES DRIVE, NORTHWEST OF MORAVIAN, ADDRESSED AS 38123 JAMES DRIVE (PARCEL #16-11-21-155-025)

- **APPEAL: SFR – JAMES, 38123**

FILE #20-6959: PETITIONED BY MR. JAMES FROSHEISER

Mr. Campbell summarized the variance being requested. He advised that notice of this public hearing was issued by regular mail to 40 owners and/or occupants of property located within 300 feet of the land in question, with none of those returned as undeliverable. Mr. Campbell confirmed that as of earlier today, there were no emails or written replies received in response to the mailing.

Mr. John Frosheiser, petitioner, 38123 James Drive, Clinton Township, Michigan 48036, replied to inquiry that he would like to proceed with his petition this evening.

Mr. Campbell stated the communication indicates the petitioner's name is James Frosheiser rather than John Frosheiser.

Mr. Frosheiser clarified his first name is John, but he lives on James Drive.

Mr. Thompson confirmed the name is John on the application.

Mr. Frosheiser explained they moved to this house in December 1997, and there were 40-foot-tall pine trees planted at least 40 years ago that hung over his property by 13 feet. He noted he has a double-wide driveway, and when his kids were little, it was not a big deal to him because he did not need the parking spots. Once his three children started driving, he needed the parking spots. He emphasized he cannot park under the trees with all of the pine sap dropping down from the trees. They trimmed the trees and he had new concrete poured in 2012. He explained the neighbors were supposed to be keeping the trees trimmed, but instead they are cut straight up the property line, and he referred to it as "hideous" because it has not been maintained, there is a privacy screen with weeds growing in between the cyclone fence, and he has to maintain it. He indicated that no

one is currently living in the adjacent house. He and his wife decided to spend the money on this carport so they do not have to look at the neighbor's property.

Mr. Deyak opened the floor for public comments, but no one spoke.

Mr. Campbell felt the practical difficulty was indicated in the petitioner's written communication, where he made the strong point that he does want sap from the pine trees to fall on his vehicles. He felt that is an appropriate practical difficulty that merits the variance for the carport.

Mr. Deyak concurred with Mr. Campbell.

Mr. Merrill agreed as well, noting there would be damage to the vehicles from the tree sap.

Motion by Mr. Merrill, seconded by Mr. Campbell, with reference to File #20-6959 and application from Mr. John Frosheiser, 38123 James Drive, Clinton Township, Michigan 48036, for variance to Clinton Township Planning and Zoning Code, Chapter 1292.01-c, Land Use Regulations, Schedule of Regulations Limiting Height, Bulk, Density and Area, Footnotes to Schedule of Regulations Chart, concerning Lot 13, Coulon Farm Subdivision, located west of James, northwest of Moravian, addressed as 38123 James Drive (Parcel #16-11-21-155-025), that variance be granted to permit the construction of an 18.5-foot by 55-foot carport on the north side of a home in the R-2 One-Family Residential District, being located 3 feet from the north side lot line, which is 7 feet less than the minimum required 10-foot side yard setback; further, this grant of variance is based on claimed practical difficulty being the damage to vehicles being parked in the driveway due to the sap from the trees hanging over from the neighboring property; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances.

Mr. Deyak opened the floor for public comments, but no one spoke.

Mr. Thompson confirmed that there were no additional emails received.

Roll Call Vote: Ayes – Merrill, Campbell, Pearl, Deyak. Nays – None. Absent – Marella, DiBartolomeo. Motion carried.

EAST ½ OF LOT 301, PIPER’S BROAD ACRES SUBDIVISION, LOCATED NORTH OF WILLIAMSON, WEST OF BARRIS, ADDRESSED AS 19861 WILLIAMSON (PARCEL #16-11-33-455-021)

**- APPEAL: SFR – WILLIAMSON, 19861
FILE #20-6960: PETITIONED BY MR. MARTIN LOLLIE
REPRESENTED BY MR. PATRICK WELLS**

Mr. Campbell summarized the variance being requested. He advised that notice of this public hearing was issued by regular mail to 72 owners and/or occupants of property located within 300 feet of the land in question, with 2 of those returned as undeliverable. Mr. Campbell confirmed that as of earlier today, there were no emails or written replies received in response to the mailing.

Mr. Thompson confirmed that there have been no emails received.

Mr. Martin Lollie replied to inquiry that they would like to proceed with their petition this evening. He stated his home address is 14103 Harrison Drive, Warren, Michigan 48088. He purchased this home on August 31st, 2011, and the pool was there when he bought the home and has been there for over twenty years. He explained he recently applied for a rental license and when they conducted the inspection, they discovered there was never a permit pulled for the pool. They had an electrical wire going over the pool, and the pool is three feet from the fence, and it needs to be six feet from the fence. They applied for the variance, and he felt that the pool would fall apart if they tried to move it over three feet. He did not feel the pool has caused a problem for anyone in its current location. Mr. Lollie explained they had the wire moved, which eliminated that danger of having it over the pool.

Mr. Deyak questioned whether the electrical line was moved.

Mr. Lollie replied affirmatively, noting they paid an electrician \$750 to move the wire so it was the proper distance from the pool. He applied for a permit, and the electrician obtained the permit to move the electrical wire, so that has been completed.

Mr. Thompson confirmed that the Building Department informed him that the wire has been moved.

Mr. Patrick Wells, 19861 Williamson, Clinton Township, Clinton Township, Michigan 48035, resident at the subject location, stated the neighbor informed him the pool has been there for about 30 years, and the neighbor indicated to him he has no objection to its location. He did not feel it would make sense to take the pool out and move it over three feet. He added there is a privacy fence and a large tree between his house and his neighbor’s house. He requested that the variance be approved.

Mr. Campbell stated he is generally in favor of this, but he would like to approve it for a limited period of time for the useful life of the existing pool. He felt the only reason is that

it prevents this variance from existing forever or rebuilding the pool in the same location. He drove through this neighborhood yesterday around lunchtime, and he never saw so many cars, trucks and vehicles parked in the driveways and on the streets. He questioned whether they are running a business out of this house.

Mr. Wells replied no. He replied to further inquiry he cannot speak to why there are so many vehicles in the neighborhood. He stated he has three vehicles, with a fourth that is currently outside, although it is usually parked in the garage.

Mr. Campbell reiterated he would be in favor of granting the variance for the useful remaining life of the pool.

Mr. Wells felt that would be acceptable, noting if he had to take it down because of a problem and he opted to put up another pool, he assured it would be six feet from the fence in order to comply with the ordinance.

Mr. Thompson replied to inquiry that no emails have been received from the general public.

Motion by Mr. Campbell, seconded by Mr. Pearl, with reference to File #20-6960 and application from Mr. Martin Lollie, 14103 Harrison Drive, Warren, Michigan 48088, as represented by Mr. Patrick Wells, 19861 Williamson, Clinton Township, Michigan 48035, for variance to Clinton Township Building and Housing Code, Chapter 1492.04-(e), Swimming Pools, Location of Outdoor Pools, concerning the east ½ of Lot 301, Piper's Broad Acres Subdivision, located north of Williamson, west of Barris, addressed as 19861 Williamson (Parcel #16-11-33-455-021), that variance be granted to permit the continued existence of an above-ground swimming pool in the rear yard of a single-family residence in the R-5 One-Family Residential District, located three (3) feet from the side lot line, being three (3) feet less than the minimum six (6)-foot setback required for pools; further, this variance is granted with the stipulation that it is only in effect for the remaining useful life of the existing pool, with no replacement pool to be erected in this location without meeting the required side yard setback; further, this grant of variance is based on the claimed practical difficulty of moving an existing above-ground swimming pool; further, this grant of variance is contingent upon compliance with all other requirements of Township ordinances. Roll Call Vote: Ayes – Campbell, Pearl, Merrill, Deyak. Nays – None. Absent – Marella, DiBartolomeo. Motion carried.

**PART OF LOT 53.86 ACRES LOCATED EAST OF HEYDENREICH, NORTH OF CASS,
ADDRESSED AS 42380 HEYDENREICH (PARCEL #16-11-09-276-014)**

**- APPEAL: SFR – HEYDENREICH, 42380 (SINGLE-FAMILY ACQUISITION OF
FAMILY LIFE BROADCASTING SYSTEMS (FLBS) PARCEL
FILE #20-6958: PETITIONED BY MR. RICHARD LINNELL
OF LINNELL & ASSOCIATES, PLLC
REPRESENTED BY MR. TOM PLATZ**

Mr. Campbell summarized the variance being requested. He advised that notice of this public hearing was issued by regular mail to 124 owners and/or occupants of property located within 300 feet of the land in question, with none of those returned as undeliverable. He indicated there were three letters received prior to tonight's meeting, with copies of those distributed to all of the Board members. He read those letters into the record:

John & Rose Meyers, 42375 Sheridan Ct. – opposed to the variance requested; felt it would degrade existing property values; complained wildlife in the area would be in serious jeopardy if building is permitted in this area.

Kevin Miekis, son-in-law of Dr. Clarence Jabs – expressed concerns about the proposed property splits; questioned that there is no practical difficulty; complained that Dr. Jabs' property would be landlocked and inaccessible because no current functional recorded easement exists; current Family Life driveway was extended at Dr. Jabs' expense to lead to his house, and he has paid for the maintenance of this driveway for the last 25 years; concerned about any easement requiring permission from all inclusive homeowners, which would be a nightmare; posed a number of questions for which he would like answers.

Tom Platz, 42244 Shulock Drive – conducted a door-to-door survey regarding this appeal, and 23 homeowners were in favor of the variance request; explained how he conducted this survey.

Mr. Campbell confirmed that there were 23 signatures on the attached pages and the addresses were on various streets, including Gaberty, Sheridan, D'Harte Ct., Kollmorgen, Little Road, Garrisi Court, Shulock Drive, and one on Heydenreich. Mr. Campbell did not validate whether the people signing this petition were in the 22 lots affected by this division. He indicated he received this correspondence less than an hour ago so he did not have the time to confirm that information.

Mr. Thompson replied there has been no additional correspondence received.

Mr. Rick Linnell, on behalf of the petitioner, 2804 Orchard Lake Road, Suite #203, Keego Harbor, Michigan 48320, replied to inquiry that he was unable to communicate with Mr. Platz as to whether they want to move forward with their request this evening. He believed they want to move forward.

Mr. Tom Platz confirmed that none of the people who signed the petition he submitted were included in this application for variance.

Mr. Deyak questioned whether Mr. Platz wishes to move forward with this variance request this evening, or whether he would like to have it postponed to the next meeting.

Mr. Platz inquired as to the circumstances if the vote is 2-2 or 3-1.

Mr. Thompson replied the motion fails, because a positive vote of all four members is needed for a motion to pass.

Mr. Platz and Mr. Linnell both agreed to go forward with this variance request this evening.

Mr. Linnell tried to address the concerns raised by Mr. and Mrs. Meyers. The letter from the Meyers addresses why this request should be granted, although he realizes that letter was not in support of the variance. He pointed out that all of the concerns raised about development and how much they love nature are the exact reason that his clients have gone to these lengths to make sure everything will remain as is. His clients want to own this property with the exclusive and sole purpose of maintaining it in its current natural state to serve as a natural buffer with no improvements or any structures on it. He added that they would want recorded restrictions to run with the land. He felt if Mr. and Mrs. Meyers had a chance to hear what was being said, he felt they would lend their support for this. Mr. Linnell addressed the concerns raised by Mr. Miekis on behalf of Dr. Jabs, and he assured his clients, as well as the owner of the property, have made great efforts to communicate with Dr. Jabs. He addressed the concern of the property being landlocked, and as an attorney, he is aware that Michigan courts abhor landlocked properties. He emphasized that Dr. Jabs' property has an easement, although it may not formally be reduced to writing, the law would support it as would the current owners of the property. He assured there is no desire to remove any access for Dr. Jabs. Mr. Linnell stated if they were to receive approval this evening, part of that agreement would be the creation of an easement that would specifically state and locate the exact easement that Dr. Jabs and the seller use. Included in that easement would be maintenance terms and repair terms, and he indicated that the representative for the seller, Mr. Mack Piotrowski, is joining this meeting. He assured this easement has been considered and discussed with the Township as something important that would have to be addressed if they are fortunate enough to be approved. He assured that Family Life Communications, Inc. is absolutely on board with formalizing the agreement, although he claimed that Dr. Jabs, as a property owner, has all of the rights necessary to access his property.

Mr. Linnell addressed the impact and change with this proposal, stating it is both “nothing” and “everything”. He claimed it is “nothing” because, to the eye, there is nothing that is going to be done to these properties that will change its appearance. The petitioners will be recording restrictions to make sure that the property remains in its natural state. The reason he said “everything” is because what people come to enjoy about the current state of the property will now be in perpetuity. He pointed out Family Life can do what they

want with their property, pursuant to the confines of the Zoning Ordinance, but by taking this step with this plan, this property will be protected and remain in its natural state. He stated he has been a part of many variance requests over the years, and he could not recall a time when he ever sought a variance on behalf of a client or himself where he did not want to encroach on a setback, construct a taller building, be permitted to have a drive-thru, or something that was proposing to use the property in a more intense manner than what the ordinance permitted. He clarified that, in many cases, the variances made sense based on the circumstances, but in this case, the variance being requested is permission to turn the property into a conservancy. This is a chance for private individuals to do what municipalities or conservancy groups do, and that is to buy land in a community that is well-developed, and turn it into a conservancy. He added the fact that it is adjacent to a tributary of the Clinton River is of great importance to all, and is a benefit to the municipality, the county and the state. He felt this is why the Board should strongly consider granting this variance, because it is “a win all the way around”. He understands the ratios of property sizes since he was a former developer and someone who represents developers, and it is very appropriate, but certain scenarios presented, when applying the ordinances, do not always make sense for the greater good of the community. He felt this is one of those rare exceptions. He requested the variance be approved this evening, and he offered to answer questions. He added that Mr. Platz is a representative of the group of twenty-two proposed owners who have applied for this variance, and Mr. Mack Piotrowski is a representative for Family Life Communications, and they are both participating in this meeting and would be able to answer questions as well.

Mr. Platz stated they have been working on this for a long time. The recession stopped them and they had to back out. He stressed the practical difficulty is how they would manage a large piece of property in order to collect taxes and insurance. By having a like-minded group of people proposing to do what Mr. Linnell has said, they feel this is a “win-win-win” and on a scale of having the portions of property combined with their current properties.

Mr. Mack Piotrowski, Chief Financial and Operations Officer for Family Life Communications, Inc., noted that Mr. Platz approached him about a year-and-a-half ago to discuss this and has been actively pursuing this for a long time. He feels by selling the property to these owners will keep the property as is, and it will help their situation because there will be more people watching the property. They have five to ten miles of copper wire in the ground for those towers, and people riding on it would damage their signals. It is easier to have people there who will own and have interest in a big portion of the property, and they will be watching it and calling the police when necessary. They have an engineer who comes out once a month to check everything, and if they have to be out there more often, they do so, but it is a situation where it helps their ministry because they are 100 percent donor-supported, broadcasting throughout the country, and it helps them to give back to the community as well.

Mr. Kevin Miekis, representing Dr. Clarence Jabs, 42400 Heydenreich, noted that all of the conversation to this point has been about the good of the community; however, he claimed everyone is failing to realize that this is private property where

no one in the community is going to be able to have access. They wish to secure the property with gates, so no one can use it other than this group purchasing it as part of their backyards. He claimed it is not a conservancy. He pointed out variances are granted to reduce hardship, and they do not create hardships to get variances. He felt the letter of the law of the State of Michigan and Clinton Township needs to be followed and upheld when considering this. Any hardship they are claiming are what they took upon themselves. He felt that any attorney would have told them that they were in breach of the ordinances because of this ratio, but they went forward regardless. He compared it to the adage, "It's better to beg for forgiveness than to ask for permission". He stressed it will not benefit the community but only the homeowners who will have an increased property value.

Mr. Pietrowski responded that since they purchased the property, Dr. Jabs has had right-of-way and has a key to the lock that opens that gate. He complained that Dr. Jabs refuses to lock the gate, so it is now open. They try to lock it but it get opened and does not get relocked. He stated that he does not want to say anything negative about Dr. Jabs, and he admitted he does not know Dr. Jabs, but he confirmed that he has had that right-of-way for years, and it was never a problem for them. He added Dr. Jabs has helped them, when he was able, to keep some snow off of the road. He assured they are not restricting Dr. Jabs from entering his property, and he does not believe that it is the intent of Mr. Platz and the prospective purchasers to restrict access for Dr. Jabs. Mr. Pietrowski assured there will be no driving back there by the landowners who are purchasing the property. He felt some of Mr. Miekis' comments were not totally accurate as to what they have done with the road since 1988 and what they will be doing going forward.

Dr. Clarence Jabs, 42400 Heydenreich, Clinton Township, Michigan, appreciated all of the cooperation from Family Life all of these years, noting they always looked after him, and he looked after them. He claimed he removed all of the snow from the drive. He claimed that they never talked with him about the situation or the maintenance of the road. He explained that for all of these years, the residents abutting the Family Life property were utilizing that property, and Family Life threatened to put up a fence to stop it. He felt these 22 homeowners just want some property in the back of their homes, and he has no objection if they were offered some property up to the road but not including the road. [Note: Dr. Jabs was experiencing trouble with his microphone and was inaudible, so he indicated he would be calling in on his phone to complete his comments].

Mr. Pearl could not see how the discussion on the easement affects this Board. He felt the consideration of this Board is to determine the lot width-to-depth ratio, and they have no control over the easement. He pointed out they are not changing the easements, and he questioned whether this Board is allowed to make any stipulations on that easement.

Mr. Thompson replied that is a tough question. His understanding is that there is no formal recorded easement at this time, although there is a driveway. He drove on the

driveway and confirmed the gate is not locked. He explained the idea is to create an easement, but that is all he is aware of is the intent to do so. If the Board wants to place that condition on a variance, he is not sure whether that will hold up legally. An easement like that is a private agreement between property owners, and the Board's task is to determine whether to consider a variance request for lot width-to-depth ratios. He agreed they need to understand the impact of what their decision will have, but a lot of the issues being raised are private property issues for which the Township has no jurisdiction.

Mr. Pearl questioned whether the parcels being sold have the easement on them.

Mr. Thompson replied he understands that the 18-acre that would be split off and attached in different forms to the adjacent properties does not currently have a recorded easement. He clarified he has not seen a recorded easement for that driveway that exists, so that would be a question for Mr. Linnell, Mr. Platz, or Mr. Piotrowski to answer.

Mr. Pearl inquired as to whether any part of that driveway would be on any of the parcels that are being proposed to be sold.

Mr. Thompson replied that driveway is located on 16 of the parcels.

Mr. Pearl stated he does not have a problem moving forward if they stipulated that the easement has to be created for the existing driveway to be maintained. If it is found to be voided by court action, that is beyond what they can do.

Mr. Thompson commented that the Zoning Board of Appeals has the right to place reasonable conditions on a variance, but the question is what is considered a reasonable condition and also what jurisdiction the Board has over those conditions. He cautioned that he cannot answer legal questions about private property issues.

Dr. Jabs indicated he is on the phone and apologized for the earlier problems he was having with his microphone. He admitted he did not return a call to Mr. Platz, and that was his fault; however, he added that the people from Family Life Communications never contacted him to discuss any of this. He explained that all of the residents who back up to this property have very little land, and Family Life was planning on putting up a fence. The residents want some land in the back, so he could not understand why Family Life could not sell them some property but only to the road. He felt they could leave the drive, and they would not have this problem. He objected to having 15 people he has to deal with every time he drives on that road. He recalled Mr. Platz commenting that they want to keep all of these people off of the road, but he questioned how they will be able to do that when they own part of the road. He addressed the issue with the gate being unlocked, and he stated that he always used to lock the gate, but it is currently in bad condition and "like trash" so it does not even swing open. It is difficult to close the gate.

Mr. Miekis complained that the description of what is going to be done has been secretive. He does not know what will happen with that property, and no one has

seen any of the agreements other than the petition to obtain the variance for the property split. He felt everything to this point is “word of mouth” and he has seen no official documents as far as any plans. He claimed that going on what has verbally been proposed has a lot of people nervous.

Mr. Campbell stated that in looking at this, his immediate reaction is that this is a self-created practical difficulty. It is the creation of the proposal that creates the problem with the width-to-depth lot ratios, and in looking at it as self-created, one could say it should be denied. He noted there were a number of good points being made by a number of parties on both sides to retain natural areas, and there has been a lot of effort in doing that. He recognized the concerns of those who need access on that road to make sure nothing is being blocked. It seems they are in the very early stages of a discussion, and a lot more should be taking place between the various parties involved, including Family Life Communications, Mr. Linnell, Mr. Platz, and Dr. Jabs, as well as the people they choose to bring in. He expressed concern regarding the Township ordinances and the unintended side effects that may occur should this variance be approved. If this variance is granted by appending all of this additional property onto these 22 lots, they are creating some very large lots. According to the Zoning Ordinance, all of those people could erect monster accessory structures on their property without having to obtain a variance. The additional property would count toward the overall size of their property, even if they signed an agreement reflecting that they will not place any structure on the added portion of their lots. He felt that needs to be looked at, and he felt this should be tabled for up to six months to give all of the parties an opportunity to work out all of the details and answer the questions that have been raised. He would also like to see the opinion of the Township attorney as to what other impacts there may be to the Zoning Ordinance as a result of this if it is approved. He cited one example of possibly giving those residents the ability to create mammoth accessory structures, and he is not sure that is something the Township wants to do. He suggested postponement or denial at this point, not approval; however, he felt there are enough positive points for the benefit of the community and the homeowners that it merits further review. He stated he is puzzled that, although it is nice to have a natural area behind the house, he questioned why people would pay money for property that they cannot use but will still be responsible for paying the taxes on it.

Mr. Pearl stated he does not disagree with Mr. Campbell. He saw the road on the large plan that he was able to pull up on his computer, and he confirmed it would cross over the proposed lots. He addressed the suggestion that possibly the residents could purchase the property up to the road, but he admitted that would not give them much property. He stressed it is a complicated situation and he has no problem tabling it. He agreed it offers some advantages to the homeowners as long as they are not allowed to build on it, and the specification that Dr. Jabs can use the easement without any problems from any of the homeowners. He suggested it be put in writing and signed by everyone, stating it is “pursuant to the Zoning Board of Appeals approving the variance”. He questioned whether that would be possible to have that done prior to coming back to this Board.

Mr. Thompson replied that is not a question he can answer, but it would be up to Mr. Linnell or the applicant to answer. He does not know what is possible from their standpoint.

Mr. Pearl stated there would be an easement document for crossing the properties, and there would be the development restriction covenant that they indicated. He felt if they could complete those two documents, they could have a discussion, along with talking to the Township attorney to make sure the homeowners cannot build larger accessory structures as a result of this variance.

Mr. Campbell felt the Township attorney should review the results of what the parties come up with and he can provide his opinion as to how it may impact their Zoning Ordinance. He noted he used the larger accessory structures as one example of a way in which the Zoning Ordinance could be impacted. He added there may be other aspects of the Zoning Ordinance where there would be unintended side effects.

Mr. Deyak felt there are some loose ends which need to be worked out. He stated he is not prepared to make a decision on this, and felt others need to get involved.

Mr. Merrill agreed with Mr. Pearl and Mr. Campbell, and although the easement may not pertain to this Board, he questioned who will maintain the driveway. He questioned if, while being maintained by someone hired to do so, someone slips and falls, and he asked who is ultimately responsible. He drove down the road, and there were deer out there. He agreed it is a beautiful area with wildlife, but he would like some assurances that the Zoning Ordinance is not impacted in a negative way. He would like to see the details “tightened up” and get a better idea of how this can be done moving forward.

Mr. Chris Wilson, 20714 Gaberty, Clinton Township, Michigan 48038, stated when they purchased their house, they talked with neighbors who were no longer there, and they talked about buying the property in the back to preserve it. He stated that occurred prior to 2006 and they liked that idea. They bought the house and liked the view. He added that there are people who are willing to buy the property just to protect their view. He stated he has plenty of property but would like to preserve the wildlife in the area, including the deer, turkeys, foxes and everything else. He appreciates and respects that some people may look at this as a “land-grab”, he assured it was never his understanding that anyone wanted to build anything on it. He felt they can make it work for everyone, and he recalled Dr. Jabs was involved with this “on the first go-around”, and he recalled Dr. Jabs was going to buy the first two pieces of property off of Heydenreich because the people there did not want to participate. He does not know what changed since that time, and he understands and respects Dr. Jabs’ concerns, but he stressed there is a lot of consideration put into this.

Ms. Amy Coury, 20874 Moyer Drive, Clinton Township, Michigan 48038, stated she backs up to the property that has the driveway on it. She claimed from the beginning, the purpose of all of the neighbors was to preserve the property so that

it is not built on and someone does not buy it and put apartments behind them. She stressed the intent of the neighbors was to keep the natural area behind them. They have worked hard on this, and they have an agreement that assures they will not put up any permanent structures, and they are trying to prevent that from happening.

Mr. Campbell stated if there is a written agreement, that should have been submitted.

Mr. Deyak felt there are some open issues that need to be looked into. He commented it sounds like a good plan, but there are questions that need to be answered. He asked Mr. Thompson as to whether it would be his suggestion to postpone this for three months.

Mr. Campbell felt there are a lot of details to be worked out, and he suggested it be postponed for up to six months to give them an opportunity to sort out all of the details.

Mr. Piotrowski referred to a comment from Dr. Jabs that they have not communicated to him and, with all due respect to the Board, he assured they tried to call and email Dr. Jabs. In 2018, they sent a letter out to all of the property owners because there was encroachment and they wanted to make sure there were not going to be any issues if someone got hurt on their land. He added they had to look at the possibility of a fence, because if the neighbors did not move their belongings back onto their own properties, they would have no choice but to put up a fence, which would cost them \$70,000. He claimed the gate that Dr. Jabs referred to as being difficult to swing open has been fixed. The road has to be there, both for their own use as well as Dr. Jabs' access to his home. He is willing to get an easement from the property owners who want to buy that land so he can maintain his station, and he felt they will be comfortable with that. He did not know how they can get an easement from people who do not currently own the property before they can close and have the ability for them to buy the property. He felt a postponement for six months is too long, adding that these people have been trying to purchase this for a long time, and it has taken a long time to this point. Delaying it for six months could create the potential for this to fall apart and they will be back to the beginning.

Mr. Campbell clarified he is not proposing to delay it six months, but he is proposing to give the petitioners up to six months to give the parties an opportunity to get together. He felt they are all so far apart at this point, with so many details to be worked out, and it may take some time to do that. He reiterated the six-month period is only a suggested period of time.

Mr. Piotrowski stressed the problem is that they have tried to communicate with Dr. Jabs, and he emailed Mr. Miekis. They turned down an offer for them to buy the whole property because he already has an offer from Mr. Platz. He does not know whether this is an attempt by Dr. Jabs to stop the whole process so they can try to buy everything again. He agreed they probably should have put the purchase agreement in with this document which explains what they are going to do with the road and the property, and that each property will be staked out so they can determine the property lines. He stressed they have put a lot of work into this contract, and felt it is being delayed for six months, and

that is the frustration he is getting from this meeting. He assured he was not trying to eliminate Dr. Jabs from this offer, and he was asked if he wanted to be part of it. He added that he has nothing bad to say about Dr. Jabs because he has been using the road and maintaining it from time to time, and they have had a good relationship. He reiterated he does not understand how they can get an easement from people who do not own the land.

Mr. Pearl stated he has no problem moving this to the next month if they are prepared to come forward with a proposed easement and a proposed agreement on the land remaining undeveloped, with an opinion from the Township attorney addressing the questions that have arisen this evening.

Mr. Deyak agreed with Mr. Pearl.

Mr. Campbell felt the motion should be open-ended so they do not have a deadline they cannot meet.

Mr. Pearl stated they can always cancel it.

Mr. Platz questioned in their proposal for the variance, they identified Section 1230.07 in the Township Ordinance, which provides an exception to the general rule that the creation of a non-development site will negate the lot size criteria. He questioned whether they are developing language that would point towards a non-development site, which would be every square foot beyond their platted land. Their goal is to keep the area natural, and all they want to do is cut a little trail so they can walk the area and enjoy nature. Because Family Life has been quite liberal with the neighbors, keeping the noxious weeds at bay and allowing them to plant wildflowers, they have been very generous. The neighbors felt it is time to move forward to do this. He would like a quick list of the issues they need to address. As far as the attorney, he indicated they met with Mr. Thompson, asked what the criteria would be, and were told to follow the process, which is what they are doing.

Motion by Mr. Pearl, seconded by Mr. Merrill, with reference to File #20-6958 and application from Mr. Richard Linnell, of Linnell & Associates, PLLC, 2804 Orchard Lake Road, Suite 203, Keego Harbor, Michigan 48320, as represented by Mr. Tom Platz, 42244 Shulock, Clinton Township, Michigan 48038, for variance to Clinton Township Planning and Zoning Code, Chapter 1226.04-(a)-(4), Design Layout Standards, Lots, Sizes and Shapes, concerning part of 53.86 acres located east of Heydenreich, north of Cass, addressed as 42380 Heydenreich (Parcel #16-11-09-276-014), that further consideration of variance request to permit the splitting of an 18.57-acre portion of a 53.86-acre parcel zoned RML Multiple-Family Residential (low-Density) and attach portions to twenty-two (22) existing single-family lots to the north and west in the existing adjacent subdivision, creating lot width-to-depth ratios that do not meet the maximum permitted ratio of 1:3, be postponed until next month's meeting, scheduled for Wednesday, November 18th, 2020 at 6:30 p.m., for the purpose of having the petitioner submit the proposed easement to benefit the seller and Dr. Jabs, and to see a proposed

agreement between the new purchasers showing this land to be developed; further, to request that the Township Attorney review this matter.

Mr. Thompson replied to inquiry that no additional emails were received from the general public.

Mr. Campbell felt the postponement needs to be open-ended. He felt that an attempt should be made within the month to contact Dr. Jabs and involve him in the discussion because he is a critical party in this.

Mr. Pearl stated he has no problem with Dr. Jabs being involved, but pointed out Dr. Jabs is in no different shape whether or not the property is sold because there is no current easement. He felt if the property is sold, he would be better off if he gets a recorded easement. He **amended the motion** to include the following:

Further, to contact Dr. Jabs and involve him in discussions on this matter.

Mr. Merrill **amended his support**.

Roll Call Vote (on amended motion): Ayes – Pearl, Merrill, Campbell, Deyak. Nays – None. Absent – Marella, DiBartolomeo. Motion carried.

PUBLIC COMMENTS

Mr. Deyak opened the floor for public comments, but no one spoke.

Mr. Thompson confirmed no emails have been received.

REPORTS OF MEETINGS

- **APPROVAL OF SEPTEMBER 16TH, 2020 REPORT**
 - **APPROVAL OF SEPTEMBER 17TH, 2020 REPORT**
-

Mr. Campbell stated he had no changes to the September 16th, 2020 report, but he requested the following change to the September 17th, 2020 report:

Page 3, Paragraph 7:

Change from: “Mr. Campbell inquired as to whether they built their fence next to the wall.”

Change to: “Mr. Campbell inquired as to whether they will build their fence next to the wall”

Page 3, Paragraph 8:

Change from: “Ms. Bettini replied they put up the fence...”

Change to: “Ms. Bettini replied they will put up the fence...”

Mr. Merrill requested the following correction to the September 17th, 2020 report:

Page 4, Paragraph 3:

Change from: "...to make sure they are ablet to keep..."
Change to: "...to make sure they are able to keep..."

Motion by Mr. Campbell, seconded by Mr. Pearl, to approve the report of the September 16th, 2020 meeting as submitted and the September 17th, 2020 meeting as revised. Motion carried.

MEETING SCHEDULE

-- CONFIRMATION OF NEXT MEETING – NOVEMBER 18TH, 2020 AT 6:30 PM.

Mr. Thompson confirmed that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, November 18th, 2020 at 6:30 p.m. via GoToMeeting. He indicated the following items will be on the agenda:

- Union Lake Villas (postponed from September 16th, 2020)
- Heydenreich property split (postponed from this evening)
- Canal Point Plaza – request for variance on height of lawn signs
- Single-family residence on Deanhurst – addition to garage being over the square footage permitted, and also needing a side yard setback variance
- Single-family residence on Rhoades – addition to a home on a corner lot, being closer to the street side lot line than the minimum required setback
- BP Gas Station (addition of Dunkin Donuts) on Gratiot – number of wall signs

Mr. Thompson indicated he has not heard anything from the petitioner of Union Lake Villas, but shortly after the September meeting, he had indicated he did not know if he was going to proceed.

ADJOURNMENT

Motion by Mr. Campbell, supported by Mr. Merrill, to adjourn the meeting. Motion carried. The meeting adjourned at 8:09 p.m.

Respectfully submitted,

Robert M. Campbell, Secretary
CLINTON TOWNSHIP BOARD OF APPEALS

ces:11/03/20

ces:11/04/20

Approved ___