

CHARTER TOWNSHIP OF ALPENA
ZONING BOARD OF APPEALS
MINUTES- Regular Meeting- Tuesday, June 15,2021

MEETING COMMENCED: 7:01 PM

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT:

Steve Dean, Chair, Andrea Dutcher, Tom Hilberg, Russ Rhynard, Susan Skibbe, Secretary

ABSENT:

None

OTHERS PRESENT:

Alan & Amy Guest, 124 S. First Ave., Alpena, Applicant

Don & Colleen Marceau, 1441 Long Rapids Rd., Alpena

Stanley & Linda Winterstein, 8907 Gutchess Rd., Alpena

Jim Wallen, 2963 S. Third St., Alpena

Nathan Skibbe, Supervisor, Charter Township of Alpena

ADOPTION OF AGENDA:

Andrea Dutcher made a **motion** to adopt the agenda as presented, **supported** by T. Hilberg. *Motion passed.*

APPROVAL OF MINUTES:

T. Hilberg made a **motion** to approve the minutes from April 20, 2021, as presented, **supported** by A. Dutcher. *Motion passed.*

PUBLIC MEETING PARTICIPATION RULES were read for those present.

PUBLIC COMMENT:

Alan Guest restated the history of the land, owner/parents are now both deceased, and the children are now trying to divide the estate. He stated that he felt they had met all the criteria needed for a variance to be granted, and that since two (2) of the children each want to own half of the parcel, this was not self-created. Their future plan is to construct a home on each of the non-conforming lots, which would increase tax revenue for the Township.

Colleen Marceau stated her desire to retain a portion of the waterfront lot, which holds many fond family memories, to pass on to her child in the future. They had just completed another survey of the property in fall of 2020, in an attempt to decide what to do with the land, and correct an over calculation in the feet of water frontage being billed to the taxes.

Jim Wallen, owner of lot #9, adjoining the Townsend property, stated that the family has been a good neighbor over the years, however, he has a concern about the elevation of the property and what would happen with the water run-off once the Townsend lots were filled for building sites. Currently the properties along the west side (lakeside) of Gutchess Road in that stretch are very wet in the spring, and there isn't a ditch to help with water run-off. R. Rhynard questioned if the properties are raised for septic

drain fields, J. Wallen answered they currently are not, but it is his understanding that all lots with new construction will have to be filled to the high water line, and he doesn't want his property to have even more standing water in the spring. S. Dean asked if the existing breakwall was ever completed to extend the entirety of lot #9, J. Wallen stated it did not. Supervisor Skibbe added the information that raising lot elevations is a FEMA requirement, and also most insurance companies. The Township ordinance stipulates that water run-off must be diverted to the front or the back of the lot, not onto neighboring properties.

Linda Winterstein stated she and her husband are also concerned about water drainage. Since the portion of lot #7 not belonging to the Townsend's has been built on, it has been filled with sand to comply with current requirements. A 6" pipe was installed to divert water toward the lake, however, the pipe is on an incline so the water isn't able to flow out properly, and drainage continues to be an issue.

Stanley Winterstein added that the property their family has owned on the east side of Gutchess Road for over 100 years, does have a drainage ditch maintained by the County Road Commission, that is supposed to have underground culverts diverting water from the lakeside of Gutchess to their east side are either inadequate in size or improperly installed. In either case, they do not manage the standing water during spring, or periods of heavy rain along that stretch of Gutchess Road. N. Skibbe added that both past zoning bad practices and water run-off are having a negative impact on the neighborhood.

CORRESPONDENCE:

A letter of support of the Townsend family character was received from Martha Dubey 8844 Gutchess Road, Alpena. A **motion** to file the correspondence was made by S. Skibbe, **supported** by T. Hilberg.

Motion Passed.

PUBLIC HEARING:

New Case: #Z-02-21, Alan & Amy Guest are requesting a variance to the zoning ordinance, Article 4, Section 406, Subsection C, Paragraph 1B, to split a parcel into two non-conforming lots. Property is located at 8908 Gutchess Road, Alpena, Parcel #018-235-000-280-01, in a waterfront residential (WR) zone district.

R. Rhynard stated that he has a professional and personal relationship with the Townsend family, and wanted to disclose that to the ZBA Board before making a decision on their request. He suggested to the Townsend family that there are other mechanisms available to settle an estate, and he would share that information with them. However, the Zoning Board of Appeals does not have the authority to overlook the zoning ordinance applicable to their property to assist in family estate disputes.

S. Skibbe cited the Michigan Land Division Act of 1967, PA 288, as amended, as noted in the Charter Township of Alpena Zoning Ordinance, dated May 2020, as our guidance when dividing a parcel. Most notably Section 560.109a; parcels less than one (1) acre. *If a parcel resulting from a division is less than 1 acre in size, a building permit shall not be issued for the parcel unless the parcel has all of the following: public water, or city, county, or district health department approval for the suitability of an on-site water supply under the same standards as set forth for lots under rules described in section 105 (g).* Section 105 (g) requires the DEQ to conduct all tests specific to the suitability of all soils for ground water and parcels not served by public sewers. Even more important to this case, Section 560.263: *No lot, outlot or other parcel of land in a recorded plat shall be further partitioned or divided unless in*

conformity with the ordinances of the municipality, and not less than the minimum width and area provided for in this act. Therefore, it would be illegal and irresponsible to disregard the legal guidance in place to decide this variance request.

Andrea Dutcher concurred that the law does not allow us to grant this variance request, and if four (4) of the surviving children wanted to own this property what would the expectation be of the ZBA. Prior to the 2005 combining of the three lots, none would have been compliant with waterfront zoning.

R. Rhynard pointed out to the Townsend family that with a special use permit, the Township does have a provision to allow 2 homes on one lot of this size. They would have to work out the agreement prior to requesting such a use before the Planning Commission. Supervisor Skibbe noted that the Township Assessor had suggested that the family consider a horizontal split of the property instead of a vertical division to still be in compliance with the required square footage for waterfront lots. The two families would have to be in agreement and allow each other an easement to either the water or the road. A. Guest responded that this was not what they each desired.

T. Hilberg stated that the ZBA Board does not decide cases differently whether it be for a developer or a private family. Each member visits the property and applies the zoning ordinances that are applicable to that site without prejudice.

S. Dean cited the 5 criteria in Article 8, page 8-5, the Board must decide before granting a dimensional variance, and felt in this case the first 3 were not met, so therefore the remaining 2 could not even be considered. The property itself is not unique, the request is self-created by the family members wanting to own it, and compliance with the zoning ordinance does not prevent the family from using the property. He also noted that the ZBA Board does not have the power or authority to change the zoning ordinance, that power is only reserved for the Township Board by law.

S. Skibbe made a **motion** to close the public hearing, **supported** by A. Dutcher. **Motion passed.** A **motion** was made by A. Dutcher, and **supported** T. Hilberg to **deny** the variance request. *Roll call vote: Steve Dean- yes, Andrea Dutcher- yes, Tom Hilberg- yes, Russ Rhynard- abstain, Susan Skibbe- yes.* **Motion passed.** Reason for denial, this request does not meet the criteria for a dimensional variance, and practical difficulty was not proven, and would therefore create two non-conforming lots.

NEXT MEETING- July 20, 2021 (tentatively)

MEETING ADJOURNED by Chairperson Dean at 8:00 pm.

Respectfully submitted,

Susan Skibbe, Secretary