

**MEETING MINUTES OF THE GAINES CHARTER TOWNSHIP ZONING BOARD OF APPEALS
FOR THE REGULAR MEETING HELD ON
OCTOBER 11, 2017
AT THE GAINES CHARTER TOWNSHIP OFFICES
8555 KALAMAZOO AVENUE SE • CALEDONIA, MICHIGAN 49316**

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 7:05 p.m. by Chair Werkema. A quorum was present.

MEMBERS PRESENT: Michael Alex Brew, Don Hilton, Ruth Ringnalda,
Tom Werkema, Phil Tietz (Alternate Member)

MEMBERS ABSENT: Connie Giarmo (with notice)

OTHERS PRESENT: Matt McKernan, Assistant Planner

II. CONSIDERATION OF MEETING AGENDA

None

III. CONSIDERATION OF MEETING MINUTES

September 13, 2017 – Regular Meeting Minutes

MOTION: By Member Ringnalda supported by Member Tietz to approve the minutes for the September 13, 2017 Regular Meeting.

Ayes: Brew, Hilton, Ringnalda, Werkema, Tietz

Nays: None

Abstain: None

Motion: Passed

IV. INQUIRY OF CONFLICT OF INTEREST

Member Hilton informed the ZBA that he had some limited involvement with the Guthrie case during his tenure as Township Supervisor. Hilton stated that he could remain impartial.

Member Tietz stated that he is a former neighbor of Tim VanRavenswaay and maintains a friendship with him. Mr. VanRavenswaay is the neighbor to the south of Karen Guthrie at 10097 Mariedale Drive SE. Tietz stated that he would be able to remain impartial.

V. ADVERTISED PUBLIC HEARINGS:

1. 10097 Mariedale Drive SE (A-B)

Dimensional variance from Section 5.4 to allow an accessory building that was constructed within a private driveway easement to remain in its current location.

Karen Guthrie, 10097 Mariedale Drive SE

Guthrie explained that she and her husband had purchased the property at 10097 Mariedale Drive in 2002. In 2007 she filed an application with the Township to place a 40'x20' accessory building on the property. The Guthries were unfamiliar with the concept of an access easement and would not have

placed the building in its current location had they known the building was supposed to be setback 20 feet from the edge of the easement. Guthrie explained that they had based the placement of the accessory building on the location of existing storage structures that had been erected by the previous owner. The Guthries assumed this location would not cause a conflict because the previous owner had been the person to create the access easement. The Guthries were also under the impression that the Township would visually confirm the building was in the proper location, which did not take place. Guthrie explained that the map on the original zoning application featured an existing electrical pole as a point of reference for how close the building would be to the road.

The Guthries have invested a good deal of money in upgrades to the building over the years. The building was to serve as a location for semi-annual yard/garage sales. Mrs. Guthrie concluded by explaining that there isn't a logical location on her property where the building could be moved. Mrs. Guthrie expressed her concern with the costs associated with moving the structure.

Assistant Planner McKernan explained the timeline of the case to the ZBA. McKernan explained that the Terhorsts alerted the Township to the issue in the spring of 2015. In the summer of 2015, the Guthries were issued multiple citations in an attempt to resolve the issue. This was unsuccessful and legal action was initiated against the Guthries. Following several procedural delays, the magistrate made a ruling on June 20, 2017 which formalized an agreement between the Township and the Guthries. The agreement required that the Guthries move several smaller buildings within 30 days and to apply for a variance from the ZBA within 60 days. The court has required that the Guthries move the 40'x20' accessory building within 30 days of a denial by the ZBA.

Chair Werkema asked the applicant if she understood why the Township doesn't allow accessory buildings to be placed within access easements. Guthrie explained that she now understands the concept and can understand why the Township would like the building moved.

Chair Werkema opened the public hearing at 7:20 pm.

Deb Terhorst, owner of 10098 Mariedale Drive

Terhorst explained to the ZBA that her husband had submitted a letter that summarizes their stance on the location of the accessory building. The building is located within the easement, which is illegal. The Terhorsts had purchased the property some time ago, but haven't built a home on the property because their children didn't want to change schools. Now that their kids are grown they would like to sell or build on the property. This building is hindering their ability to develop their property. Potential buyers have been put off by the building and the associated junk.

Tim VanRavenswaay, 10185 Mariedale Drive

VanRavenswaay owns the 20 acres on the south end of Mariedale Drive. VanRavenswaay initially had concerns with the junk associated with the accessory building, but Guthrie has cleaned up the area considerably. VanRavenswaay expressed that he was sympathetic to Mrs. Guthrie's situation, but would ultimately like to see the building moved.

Chair Werkema closed the public hearing at 7:35 pm.

MOTION: By Member Brew supported by Member Hilton to enter the letter from Dan Terhorst, the Guthrie’s 2007 zoning application, and the staff report dated October 4, 2017 into the public record.

Discussion: None

Ayes: Brew, Ringnalda, Werkema, Tietz

Nays: Hilton

Abstain: None

Motion: Passed

Member Ringnalda asked Assistant Planner McKernan questions pertaining to the process involved with relocating the access easement and whether the variance was specific to the Guthries or be tied to the property. McKernan explained that a variance for this building would be tied to the land. McKernan explained that the Guthries had discussed the option of relocating the easement with the Terhorsts, but they were unable to work out a resolution. Changing the location of the easement would involve surveying the property and creating a new legal description for the easement. All 3 property owners on Mariedale Drive would have to approve the easement and file deeds with the county.

Chair Werkema expressed his contention that it would be improper for the ZBA to allow the building to remain within a private easement that is shared by other private property owners.

MOTION: By Member Tietz, supported by Member Ringnalda, to deny the request for a variance from the standards of Section 5.4 to allow an accessory building that was constructed within a private driveway easement to remain in its current location. The applicant shall be granted 60 days to move the structure. The decision is based on the following facts and conclusions:

1. The problem is a self-created hardship caused by a misunderstanding on the part of the applicant as to where setbacks are to be measured from.
2. Accessory buildings for personal storage are an accepted ancillary use on residential properties. Strict compliance with the 20 foot side yard setback requirement would not unreasonably prevent the applicant from relocating the building behind their home.
3. A relaxation of the ordinance standard for side yard setbacks would not provide substantial justice to the applicant’s neighbors as the building is located within a private access easement.
4. There are no physical circumstances inherent to the property that would prevent the applicant from relocating the building 20 feet from the edge of the easement.

Discussion: Member Hilton requested that the motion be amended to allow the applicant up to 60 days to move the structure. Hilton felt that it wasn't reasonable to expect that the applicant would be able to move the building in the 30 day window mandated by the court. Assistant Planner McKernan confirmed that it is ultimately up to the Township how and when the original judgement is enforced. McKernan expressed that he felt comfortable extending the deadline to move the structure. Member Tietz, supported by Member Ringnalda agreed to amend the original motion to allow the applicant 60 days to move the structure.

Ayes: Brew, Ringnalda, Werkema, Tietz

Nays: Hilton

Abstain: None

Motion: Passed

2. 8115 Hanna Lake Avenue SE (A-R)

Dimensional variance from Section 2.3 (C) (2) & Section 5.4 to allow for construction of a home with a 16 foot setback from a private driveway easement where a 60 foot setback is normally required.

Jim Stegehuis, owner of 8115 Hanna Lake Avenue SE

Stegehuis is looking for a variance from the side yard setback standards for corner lots to allow the panhandle portion of his lot to be used as a building site. Stegehuis currently shares a 66' foot wide access easement with his neighbor at 8125 Hanna Lake. The easement is located completely on Stegehuis' property.

Chair Werkema asked the applicant if the variance was necessary for the preservation of his right to split his property. Stegehuis explained that he would still have the ability to split the property into 3 buildable lots without the variance. Stegehuis could most likely fit three lots on the west side of the property, but in his opinion that would waste the potential of the east side of the property as a building site.

Chair Werkema asked Assistant Planner McKernan if there had been any changes to the ordinance since the property had been created. McKernan explained that there had not been any relevant changes to Township ordinances since the property was created in March 2017.

Member Ringnalda expressed reservations about granting a variance of 43 feet from the side yard setback standards for corner lots in the A-R district. She asked the applicant if he had evaluated other options to minimize the variance. Stegehuis explained that the variance request is based on the desired layout of a home that a potential buyer, David Jewell, would like to place on the property.

Member Hilton asked Stegehuis if he had performed a percolation test on the property. Stegehuis stated that the property had been tested and a septic drain field likely wouldn't be able to be placed in this area. He is working with the county to design a shared drain field that would be located somewhere on the west side of the existing property.

Chair Werkema opened the public hearing at 8:00 pm.

David Jewell, Potential Buyer of East Side of 8115 Hanna Lake

Jewell explained that he desired to purchase this portion of the property from Mr. Stegehuis and face his home toward Hanna Lake Avenue. The width of this portion of the lot in conjunction with the presence of the shared access easement makes it difficult to site a home without a variance. If the variance is granted he will work with Mr. Stegehuis to split off the panhandle portion of the lot and to create a shared drain field on the remainder of Mr. Stegehuis' property.

Pat Westra, 8125 Hanna Lake Avenue

Westra has lived along this portion of Hanna Lake Avenue for 53 years. Westra and her late husband originally lived in a farm house on 25 acres at 8111 Hanna Lake. The Westras eventually sold the farmhouse and 5 acres to Dave DeVos and subsequently built a home on the remaining 20 acres at 8125 Hanna Lake Avenue. In the spring of 2017 Mrs. Westra split off the north 10 acres of her property and sold it to Mr. Stegehuis. The property was tested for percolation prior to selling it to Mr. Stegehuis. It was determined that the panhandle portion of the lot would not be suitable for a drain field, but there were at least three sites on the west side of the property that would be. Westra is concerned that any construction in this portion of the property could interfere with an artesian spring that runs south toward her property from 8111 Hanna Lake Avenue.

Dave DeVos, 8111 Hanna Lake Avenue

DeVos lives in the farmhouse to the north of 8115 Hanna Lake Avenue and is against the request. The problem Mr. Stegehuis is trying to resolve is self-created. The property should be have been configured differently if Mr. Stegehuis intended to build in this area. DeVos agreed with Mrs. Westras assessment of that building in this area could interfere with the artesian spring and cause flooding problems. DeVos spoke with the Health Department when they tested the property for percolation and was informed that they wouldn't be able to place a drain field on this property.

Chair Werkema closed the public hearing at 8:16 pm.

- MOTION:** By Member Hilton, supported by Member Ringnalda to enter the letter submitted by Pat Westra of 8125 Hanna Lake Avenue, and the staff report dated October 4, 2017 into the public record.

- Discussion:** None

- Ayes:** Brew, Ringnalda, Werkema, Tietz
- Nays:** Hilton
- Abstain:** None
- Motion:** Passed

Chair Werkema read a summary of the conclusions from the staff report. Werkema stressed his contention that this was a self-created hardship on the part of the applicant.

Member Tietz expressed his opinion based on the staff report and aerial photos of the property that the intent behind the creation of this lot was that the panhandle portion of this property not be buildable.

Member Hilton asked for confirmation that the applicant would still be able to have 3 buildable lots without this variance. Assistant Planner McKernan confirmed that denying the variance would not impede Mr. Stegehuis from creating 3 buildable lots at 8115 Hanna Lake Avenue.

MOTION: By Member Hilton, supported by Member Tietz, to deny the variance from Sections 2.3 (C) (2) and 5.4 to allow for construction of a home with a 16 foot setback from a private driveway easement where a 60 foot setback is normally required. The decision is based upon the conditions and facts of the staff report, particularly the following:

1. No evidence has been submitted that indicates that three parcel’s cannot be created in the rear and that the panhandle is required for in order to create an attractive lot for sale to this or another potential buyer. Without evidence to the contrary it can be concluded that the variance is not necessary for the applicant to be able to split the property into as many as 3 separate usable parcels, which is the same as any other eligible 10 acre parcel in the district under similar circumstances as dictated by the State Land Division Act.
2. A variance of 43 feet from the 60 side yard setback should not be considered minimal when there are numerous home designs that could fit the site with without the need for a 43 foot variance.
3. There are no exceptional, unique, or extraordinary physical conditions or circumstances inherent to the property itself that would justify a variance and the magnitude of the variance request is partially necessitated by the proposed width of the applicant’s home.
4. Without evidence to the contrary (such as perc tests showing an inability to support well and septic) it can be concluded that the variance from Section 2.3 (C) (2) is not necessary for the applicant to be able to split the property into 3 separate usable parcels and that any hardship in the utilization of the land for three home sites is self-created.

Discussion: NONE
Ayes: Brew, Hilton, Ringnalda, Werkema, Tietz
Nays: None
Abstain: None
Motion: Passed

VI. GENERAL DISCUSSION
None

VII. ADJOURNMENT

MOTION: By Member Tietz, supported by Member Ringnalda to adjourn the meeting.
Ayes: Brew, Hilton, Ringnalda, Werkema, Tietz
Nays: None
Abstain: None
Motion: Passed

Meeting Adjourned at 8:30 pm.