

**ROSE TOWNSHIP ZONING BOARD OF APPEALS
MINUTES FOR REGULAR MEETING OF JUNE 7, 2022**

ROSE TOWNSHIP OFFICES
9080 MASON STREET HOLLY, MICHIGAN

Chairperson Koop called meeting to order at 7:02 pm.

Secretary Sharich called the roll:

Present: Koop, Gambka, Sharich also serving as Recording Secretary
Absent: Brooks

Also Present: David Plewes - Zoning Administrator
Matt & Sarah Woodworth – Applicants
Julius T. Stearn, Donald Gardner, Gisela Lendle King

APPROVAL OF AGENDA:

Motion to approve the agenda as corrected to read:

Approval of Minutes January 4, 2022 replacing January 4, 2021

Motion by: Koop
Seconded by: Sharich
Ayes: Gambka, Sharich, Koop
Nays: None
Motion carried

MEETING MINUTES:

January 4, 2022 – Motion to approve minutes as presented

Motion by: Koop
Seconded by: Sharich
Ayes: Sharich, Koop, Gambka
Nays: None
Absent: Brooks
Motion carried

PUBLIC COMMENT – NON-AGENDA ITEMS:

None

PUBLIC HEARING:

Application: Woodworth LLC 3405 Davisburg Rd., Davisburg, Mi. Parcel 06-13-226-002

Chairperson Koop called the public meeting to order at 7:08 pm and questioned if Zoning Administrator Plewes had posted this meeting publicly. Plewes stated notices were sent to all property owners within 300 ft. and meeting was advertised in the local public newspaper. Chairman Koop explained to applicants that with only 3 members of the ZBA present, the applicant would need unanimous support of all members present for approval or denial of his variance request. If there were no unanimous decision, the matter would have to be postponed until a later date. Koop questioned the applicant if they wished to move forward now or reschedule; Matt Woodworth stated he would like to move forward with the hearing. Koop asked if the Township had received any written comments prior to today's meeting; Plewes explained there was no public comment to report.

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Koop asked applicant to present their need for a variance. Matt Woodworth explained that one year ago he met with the Zoning Administrator Dave Plewes about building a barn on his vacant property zoned Agricultural. At that time, he was told the only thing he needed under the Right to Farm Act was an affidavit to build an agriculture building for farm use. At about the same time, he proceeded to order the building supplies and prepare the land to construct a barn on his property. He noted it took one year to get the building package. In early 2022 his contractor called to inform him, the materials were available, and he was ready to start construction. On April 7, 2022, he made application to Code Enforcement Services for an Agricultural Use Affidavit which he completed, signed, and submitted the same day. Approximately two hours later he was notified his completed affidavit was ready to be picked up which he did the same day. Upon returning to his car, he noticed the language stating "I further understand that the State of Michigan exemption from the requirement of a building permit is NOT an exemption from adhering to the Rose Township Zoning Ordinances as they relate to, including but not limited to setbacks, height, size, etc." He immediately called the number on the form and got voicemail, he left a message asking for clarification, it was several days before he got a call back at which time, he was told he must check with Plewes. The contractor set the poles for the building on the same day he signed the affidavit. The next thing that happened was on April 12, 2022 he received a letter from Dave Plewes informing him his building was in violation of the setback requirements of the Rose Township Zoning Ordinance.

Koop asked if the board had any comments or questions of the applicant. Sharich questioned the poles that were set seemed short for a barn and was there going to be a second story in the proposed building. Woodworth stated the contractor uses a different method of construction and noted this will only be a one-story building. Gambka asked for clarification as to what Woodworth believed to be the front setback. Woodworth explained since the south side of the building faces Davisburg Rd., he believed that was the side setback and was relying on the front (east elevation) of the building to be the front setback thereby leaving plenty of land to meet the requirement.

Koop called for audience comment, the following individuals spoke:

Julius T. Stearn:
Donald Gardner:

Their comments were:

The Zoning Administrator should have informed applicant what the setbacks are.
Expressed concern there will be farm market on the land and is opposed to having one there.

Koop closed public comment.

Koop questioned applicant as to the timeline for this project. Woodworth stated the project started last year with site preparation and building construction beginning on the same day he submitted the affidavit. He received Plewes' letter sometime around April 18th informing him of the AG district setbacks and the partially constructed building was in violation of the front yard setback. Koop questioned who decided where the building was placed. Woodworth stated he did, and he showed the contractor where the southeast corner of the building was to be located. He said he misunderstood the setbacks assuming the side of the building (south elevation) was the side setback and since there is 27 ft. he thought he was in compliance. Koop explained the front setback is always measured from the Road-Right-of-Way regardless of the building's orientation. Plewes pointed out that the affidavit stated the building size is 60 ft. x 60 ft. but the site plan for the variance hearing stated the building is proposed to be 60 ft. x 72 ft. Gambka also questioned the discrepancy. Woodworth explained the barn itself is 60 ft. x 60 ft. with a 12 ft. covered porch on the side. Woodworth provided pictures of other similarly setback buildings in the area. Sharich noted that it is unfortunate that the setback requirements were not made clearer to the applicant. Woodworth stated they should be on the affidavit form further adding he placed the building in the best location for the best use of the property. Koop stated the land is rather flat at the building site. Woodworth explained it took 4 ½ ft. of

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fill in that area and will take 8 ½ ft. to 10 ft. of fill to move the barn into compliance. Sharich stated unfortunately there is nothing compelling to grant a variance. Woodworth noted there is no fence requirement, and he can put a 15 ft. fence on the property line. Koop added there is no reason to justify granting a variance in this case, this is clearly a self-created hardship, and the board must look to the standards for granting a variance. Woodworth stated this is an undue burden to have to move the building when there isn't even a permit required to build.

Motion to deny 23 ft. front setback variance

Based on the following facts:

1. Granting a variance would not create a practical difficulty – compliance with the Ordinance will not prevent applicant from reasonable use of his land.
2. There are no exceptional circumstances on this property that prohibit compliance with the Ordinance. Property size is such that placement of building within setback requirements is not unnecessarily burdensome.
3. Applicant has not proven compliance will prevent him from enjoying the same property rights and uses possessed by others in the same zoning districts and vicinity.
4. Granting a variance will be detrimental to the public welfare due to the proximity to a main public throughfare/roadway in the Township and with a possibility of the widening the roadway in the future the structure as proposed to be situated could harm the public using Davisburg Rd.
5. In this case granting of such a variance will adversely affect the purpose and objectives of the Township Master Plan and Zoning Ordinance.

Motion by: Sharich
Seconded by: Gambka

Koop stated number 4 in the finding of fact is not relevant to today's conditions and would like it removed.

Motion by: Koop
Seconded by: Gambka
All in favor:
Motion to modify carried

Sharich amended the motion omitting fact #4 from the finding of fact:

Motion to deny 23 ft. front setback variance to agricultural building currently under construction at 3405 Davisburg Rd. Parcel 06-13-226-002 based on the following finding of fact:

1. Granting a variance would not create a practical difficulty – compliance with the Ordinance will not prevent applicant from reasonable use of his land.
2. There are no exceptional circumstances on this property that prohibit compliance with the Ordinance. Property size is such that placement of building within setback requirements is not unnecessarily burdensome.
3. Applicant has not proven compliance will prevent him from enjoying the same property rights and uses possessed by others in the same zoning districts and vicinity.
4. In this case granting of such a variance will adversely affect the purpose and objectives of the Township Master Plan and Zoning Ordinance.

Motion by: Sharich
Seconded by: Gambka
Ayes: Gambka, Sharich, Koop

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Nays: None
Absent: Brooks

Motion to deny carried

Woodworth stated he will not remove the front posts but will use them to build a fence.

UNFINISHED BUSINESS:

None

NEW BUSINESS:

None

CORRESPONDENCE/COMMUNICATIONS:

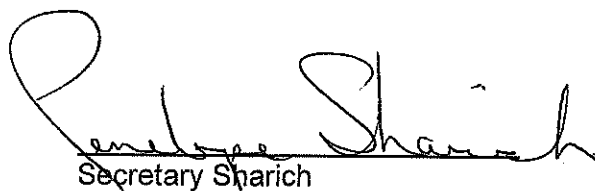
None

PUBLIC COMMENT – Non Agenda Items:

None

ADJOURN: 8:03 pm


Chairperson Koop


Secretary Sharich

Minutes Posted 06/17/22