

Chairperson
Gail Watkins
Vice-Chairperson
Justin Padgett
Secretary
Mark Simon
Members
Rex Ferguson
Beth Botke
Alternates
Greg Armbrustmacher
Logan Byrne



Clinton County
Zoning Board of Appeals

Community Development Dept.
Director
Doug Riley
Zoning Administrator
Joel Haviland
Planning & Permit Technician
Jessica Plesko

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MEETING MINUTES
JUNE 15, 2021

VIA VIDEO AND TELEPHONIC CONFERENCE
Per State Executive Order concerning OMA and COVID-19

CALL TO ORDER	The Clinton County Zoning Board of Appeals met on Tuesday, June 15, 2021 at 6:00 p.m. with Chairperson Watkins calling the meeting to order.
ROLL CALL	Beth Botke (Bath Township, Clinton County, MI) Gail Watkins (Olive Township, Clinton County MI) Justin Padgett – Absent (with notification) Logan Byrne, Alternate (DeWitt Township, Clinton County MI) Mark Simon (Olive Township, Clinton County MI) Rex Ferguson (Essex Township, Clinton County MI)
STAFF PRESENT	Dan Hufnagel, Building/SESC Inspector Doug Riley, Community Development Director Jessica Plesko, Planning & Permit Technician Joel Haviland, Building Official/Zoning/SESC Administrator
VISITORS	Greg Armbrustmacher, Zoning Board of Appeals Alternate Sheila Robbe
AGENDA	The agenda was presented for review and approval. <u>ZONING BOARD OF APPEALS ACTION:</u> Beth Botke moved, supported by Mark Simon to approve the agenda as presented. Motion carried.
APPROVAL OF ZONING BOARD OF APPEALS MEETING MINUTES	<u>ZONING BOARD OF APPEALS ACTION:</u> Logan Byrne moved, supported by Beth Botke to approve the May 18, 2021 Zoning Board of Appeals Meeting Minutes as presented. Voting on the motion by roll call vote, motion carried unanimously. [Vote of 5-0, all in favor, none opposed.]
COMMUNICATIONS	None
PUBLIC COMMENTS	Chairperson Watkins called for public comments. There were no public comments.
OLD BUSINESS	None
NEW BUSINESS <i>ZC-06-21 VR</i>	Chairperson Watkins called on Joel Haviland for report. • Joel Haviland:

- Reviewed case **ZC-06-21 VR – Application for a Variance**, noting the following:
- Richard and Sheila Robbe of 3855 S. County Farm Road in Section 28 of Bingham Township (Parcel ID#: 030-028-400-009-00, located approximately 500 feet north of the County Farm and Taft Road intersection) have requested a variance to Sections 524-C.3 and 524-D of the Zoning Ordinance.
- The applicants would like to house chickens on a 1.7-acre lot, 90 feet from the south property line and 35 feet from the north property line.
- This proposal would allow chickens to be kept in the rear yard, where a 2-acre lot and 100 feet to the property line is required within the A-1, A-2, A-3, and RR zoned properties.
- The petitioned property is zoned A-2 (General Agriculture) and is used for residential purposes.
- This 1.7-acre lot is legal nonconforming due to being created prior to the current 10-acre, A-2 Zoning District lot minimum.
- The applicant/property owner has requested a 0.3-acre variance in lot size, as well as a 10-foot variance and a 65-foot variance to the side property lines.
- The proposed chicken coop would be in the rear yard, 235 feet from the center line of South County Farm Road.
- The placement of the proposed coop is 90 feet from the south property line, 235 feet from the east property line and 35 feet from the north property line.
- This application is a result of a complaint made by neighboring property owners regarding containment of the chickens.
- The properties to the immediate east, south and west are also zoned A-2, primarily residential use along with a cemetery to the east. The property to the north is zoned R-1 (Single-Family Residential District) and is a multi-unit apartment building.
- There were no objections from local agencies.
- The Clinton County Road Commission did not provide comments.
- There were no objections from Bingham Township, conditioning containment of the chickens.
- The Mid-Michigan District Health Department has identified required isolation distances that shall be met prior to installation of the proposed chicken coop from the property owners well, septic and neighboring wells.
 - Also, the storage or use of manure shall maintain the same separation distances indicated.
- There was one written public comment (objection), from the South Bingham Cemetery, in response to noticing.
- There was one verbal comment supporting the variance from Shirley Spencer of 3864 County Farm Road (directly across the road from Richard and Sheila Robbe). She asked that this comment be presented to the Zoning Board of Appeals as she did not have the ability to attend the meeting or provide written comment.
- Beth Botke asked Joel Haviland how many chickens are currently on the property?
- Joel Haviland replied that the applicant will be available to answer this question.
- Mark Simon asked Joel Haviland how far the applicant's septic system is from the proposed coop?
 - What is the requirement?

- Joel Haviland answered that the proposed coop and yard location is approximately 75 feet from the septic system.
- Chairperson Watkins asked for any comments from the Board.
 - Hearing none, Chairperson Watkins called for a motion to open the public hearing.

ZONING BOARD OF APPEALS ACTION: Mark Simon moved, supported by Beth Botke to open the public hearing. Voting on the motion by roll call vote, motion carried unanimously. [Vote of 5-0, all in favor, none opposed.]

- Chairperson Watkins asked Sheila Robbe to explain her proposal, including reasoning.
- Ms. Robbe explained that she is proposing to move her existing flock of 8 chickens from the existing coop located close to the house to a new location (in the rear of the property).
 - Part of the proposal is also to contain the chickens more effectively.
 - Apologizing to the Board, she also noted that she has had chickens on the subject property for over 10 years without knowledge that it is not zoned for that use.
- Chairperson Watkins asked Ms. Robbe what purpose the chickens serve?
- Ms. Robbe replied that they harvest eggs from the chickens.
 - Additionally, the chickens assist her son with emotional support.
 - She feels there is a connection being made between her and her spouse's upbringing (coming from farming families) with their family.
- Rex Ferguson asked Ms. Robbe what the proposed containment systems is – if there is a fence or just a coop?
- Ms. Robbe responded that there is only a coop proposed at this time.
 - She could be willing to install fencing, if required by the Board.
 - There is existing fencing to the north and east of the property, but it is inadequate for containing chickens.
- Mark Simon inquired about setback requirements for the chicken coop.
- Joel Haviland cited Section 524 of the Zoning Ordinance: the area where the chickens are contained is required to be 100 feet to the property lines.
- Beth Botke questioned if the chickens are always kept in a coop or if they are free ranged?
- Ms. Robbe took responsibility for the issues that had taken place, explaining that she has allowed the chicken to free range.
 - Free ranging is done under her supervision when she is outside.
 - The chickens also come to her when she calls them and are overall well-behaved.
 - Ensured the Board that she will keep the chickens contained to her property.
- Rex Ferguson asked Ms. Robbe how long she hopes to free range the chickens each day?
- Ms. Robbe stated that she expects 1-2 hours per day, but only under supervision.
- Chairperson Watkins asked Ms. Robbe for any additional comments.
- Ms. Robbe described the chickens to be as much pets as they are producing farm animals to her family.
 - She would be very appreciative to have the opportunity to show by example to her son and grandchildren, a lifestyle that is important to her and her spouse.
 - Her son needs the chickens for emotional support, and she as well.
 - It has become a fun hobby.

- Chairperson Watkins asked for any comments from the public.
 - Hearing none, Chairperson Watkins called for a motion to close the public hearing.

ZONING BOARD OF APPEALS ACTION: Rex Ferguson moved, supported by Logan Byrne to close the public hearing. Voting on the motion by roll call vote, motion carried unanimously. [Vote of 5-0, all in favor, none opposed.]

- Chairperson Watkins asked Joel Haviland to review the “Basic and Special Conditions to be Satisfied” from the Staff Report.
- Joel Haviland:
 - “A variance from this Ordinance will not be contrary to the public interest or to the intent and purpose of this Ordinance.”
 - In approximately 2005 the County amended the Zoning Ordinance requirements to allow class III animals (chickens, rabbits, etc.) to be kept with a minimum of two acres of land area, provided that they do not create a public nuisance as defined.
 - The obvious reason for side yard setbacks are for the separation of structures from adjacent properties and structures (safety, noise, aesthetics, etc.). A 100’ minimum side yard setback also helps to assure owners will not create a public nuisance (brought by public officials per section 524-C.3) or a nuisance (offensive or annoying thing or practice) to neighboring homes.
 - The proposed chicken coop does not meet the 100’ separation distance but does meet the 50’ and 75’ well separation requirement from the Health Department. The proposed 1.7 acres may be seen as a slight reduction in the required 2 acres minimum.
- Logan Byrne asked if there is an applicable defense if the applicants had obtained the chickens prior to the ordinance change in 2005?
- Joel Haviland explained that if the applicants had the chickens for 10 years, the applicable ordinance would have been the 2011 version – meaning the 2005 amendment had already been in place before they obtained the chickens.
- Chairperson Watkins stated that he had considered the same defense but it seems to be problematic in reference to basic condition number 1.
 - Basic Conditions number 2 (permittance by right by district), 3 (effect upon property values), and 5 (related to owned/occupied property only) seem to be non-issues in relation to this case.
- Joel Haviland:
 - “A variance from this Ordinance shall not be the result of a condition created by the applicant.”
 - The ZBA should consider the result of the neighbor’s complaint in regard to containment of the chickens. The ZBA has the option to levy conditions that are reasonable to satisfy the intent of the Ordinance in the granting of variances.
- Logan Byrne inquired about the enforcement action in relation to this variance request.
- Chairperson Watkins offered that the variance request is necessitated because of the applicant’s actions.
- Joel Haviland:
 - “A variance from this Ordinance shall be assessed for the possible precedents or affects which might result from the approval or denial of the appeal.”
 - The ZBA should discuss the unique circumstances that may exist for this property that would differentiate this application from other

similar situations that may exist in the County. The ZBA has the option to levy conditions that are reasonable to satisfy the intent of the Ordinance in the granting of variances.

- Beth Botke asked for confirmation that this variance request includes a variance for the lot size (a 0.3-acre variance) and two variances for the side setbacks (a 10-foot variance and a 65-foot variance).
- Chairperson Watkins confirmed and explained that the Board has an opportunity to seek better conformity if desired.
- Logan Byrne mentioned mitigation using appropriate fencing for containment.
- Chairperson Watkins cited the use of chicken wire to be appropriate for containment of chickens.
- Mark Simon offered his primary considerations:
 - The requested variance for lot size is not as problematic as the side setback variances as there has been a complaint from an adjacent property owner.
 - The medical issue (referencing a letter that was written by the family's therapist).
 - The timing of the chickens' presence (on the subject property) in relation to the 2005 amendment to the Zoning Ordinance.
- Ms. Robbe stated that she knows for a fact that she had chickens in 2011 but believes she may have had them prior to that.
 - Noted that the complaining neighbor has since approached her and apologized to her, stating he does not want her to have to remove the chickens.
- Chairperson Watkins asked Staff to confirm that variances (if approved) do not expire?
- Joel Haviland confirmed, noting that a variance will stay with the property – even if sold.
- Beth Botke inquired about the likelihood of this case being precedence-setting?
- Chairperson Watkins referenced past cases regarding variances to acquire/house equine.
 - As such, this case could be precedence-setting.
- Doug Riley explained that Staff often refers to past cases to make recommendations to potential applicants.
 - There are many 150-foot-wide parcels within Clinton County.
 - Prior to 2005, 150 foot was the minimum width for A-2 properties.
 - Asked the Board to define what the unique situation(s) this case has to offset the precedence if they are inclined to approve this variance.
- Beth Botke inquired if the Board could condition a time limit on this variance?
- Doug Riley replied that if the Board approved this variance, any current or future property owner would be allowed to house chickens in the approved (coop) location.
- Logan Byrne asked the Board if they had any thoughts on the Special Conditions.
- Chairperson Watkins stated that if a motion is made to approve this variance, it will have to include a Special Condition as well.
- Joel Haviland asked Chairperson Watkins if he would like him to review the Special Conditions?
- Chairperson Watkins asked him to provide a brief review.
- Joel Haviland reviewed the Special Conditions.

ZONING BOARD OF APPEALS ACTION: Rex Ferguson moved, supported by Beth Botke to deny *Variance Request – ZC-06-21 VR* as presented based upon the following reasoning:

- Reasoning: The proposal does not satisfy the basic conditions as set forth in Section 1506A of the Zoning Ordinance as referenced in the staff report. Specifically, Basic Condition numbers 1 and 6.
- Rex Ferguson commented that he would feel differently about this case if the subject property did not have adjacent neighbors (i.e. was surrounded by farm fields).
 - Unfortunately, in this case the neighboring properties contain houses, an apartment complex, and a cemetery.
 - He also has concerns about free ranging the chickens without proper fencing.
 - Ultimately, he is uncomfortable with the precedence that this case would set.
- Ms. Robbe asked the Board if she could discuss the objection from the cemetery?
- Chairperson Watkins apologetically denied the request, stating the public hearing had been closed.

ZONING BOARD OF APPEALS ACTION: Voting on the motion by roll call vote, motion carried unanimously. [Vote of 5-0, all in favor, none opposed.]

OTHER BUSINESS

None

COMMUNITY
DEVELOPMENT
DIRECTOR'S REPORT

- Chairperson Watkins called for the Community Development Director's Report.
- Doug Riley:
 - As of current, there are no applications submitted that would require a Zoning Board of Appeals meeting in July, 2021.
 - It is anticipated that in-person meetings will resume in July, 2021.
 - When in-person meetings are resumed, Per Diems will be given for mileage in addition to meeting Per Diems.
 - Welcomed Greg Armbrustmacher aboard the Zoning Board of Appeals.

ADJOURNMENT

ZONING BOARD OF APPEALS ACTION: With no further business to come before the Board, Logan Byrne moved, supported by Mark Simon to adjourn the meeting at 7:16 p.m. Voting on the motion by roll call vote, motion carried unanimously. [Vote of 5-0, all in favor, none opposed.]



Jessica Plesko, Planning & Permit Technician

NOTE: These minutes were approved by the Zoning Board of Appeals on August 17, 2021.