



CHEBOYGAN COUNTY PLANNING COMMISSION

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CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, MARCH 4, 2020 AT 7:00 P.M. ROOM 135 – COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

PRESENT: Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson, Delana
ABSENT: None
STAFF: Mike Turisk, Jen Merk
GUESTS: Eric Boyd, Cal Gouine, John Moore, Bob Lyon, Russell Crawford, Cheryl Crawford

The meeting was called to order by Chairperson Croft at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Borowicz, seconded by Mr. Kavanaugh, to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

The February 5, 2020 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Ms. Lyon, to approve the meeting minutes as presented. Motion carried unanimously.

The February 19, 2020 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Ms. Lyon, to approve the meeting minutes as presented. Motion carried unanimously.

PUBLIC HEARING AND ACTION ON REQUESTS

No public hearings were scheduled.

UNFINISHED BUSINESS

Continued discussion regarding proposed Zoning Ordinance Amendment #155 relative to Nonconforming Buildings or Structures, Properties and Uses.

Mr. Turisk stated that a revised copy of Amendment #155 was distributed to the Planning Commission. Mr. Turisk stated that minor changes were made to the amendment based on a discussion with legal counsel. Mr. Turisk stated that the primary effort is to provide clarification and ease the standards for those wishing to maintain, convey or develop a nonconforming lot, continue a nonconforming use or expand a nonconforming building, etc. Mr. Turisk referred to Section 22.3.A and stated that the term "nonbearing" was deleted. Mr. Turisk referred to Section 22.3.E and stated that "or the cost of replacement" was added to the first sentence and "or replaced" was added to the second sentence. Mr. Borowicz stated that the cost to replace will automatically exceed 50%. Mr. Turisk stated that he will discuss this with legal counsel. Mr. Turisk stated that Section F was deleted because it is redundant. Mr. Freese noted that it is already included in Section D3. Mr. Turisk read and reviewed Sections 22.3.A and 22.3.D. Mr. Turisk stated that Section 22.3.D eliminates the need to submit a dimensional variance application for an addition to an existing structure that already encroaches in the setback so long as it does not encroach any further. Mr. Turisk stated that such an addition would maintain the same degree of nonconformity as already existed. Mr. Turisk stated that this development scenario would be approved as part of a zoning permit for an addition. Mr. Borowicz referred to Section 22.3.D and stated that this increases the extent of the nonconformity. Mr. Turisk stated that this situation would not increase the degree of nonconformity but it would increase the extent of the nonconformity. Mr. Turisk asked if the Planning Commission would like to keep 22.3.D.1 and 22.3.D.2 and delete 22.3.D.3. Mr. Freese stated that this is one of the reasons he requested that Article 22 be revised. Mr. Freese stated that the Zoning Board of Appeals has routinely granted variances in these types of situations. Discussion was held regarding Section 22.3.D.3 being deleted which would eliminate the need to apply for a variance. Mr. Freese stated that the nonconformity cannot be corrected whether this is allowed or not allowed. Mr. Kavanaugh stated that it could make it worse for someone who lives

next door and had a view of a lake. Mr. Borowicz stated that it would be a problem for a lakefront setback if someone wants to widen an existing porch and prohibit the view of the lake. Mr. Borowicz and Mr. Kavanaugh agreed that this would only be an issue in the Lake and Stream Protection Zoning District. Mr. Delana stated an exception can be made for the Lake and Stream Protection Zoning District. Discussion was held regarding diagrams presented by Mr. Turisk. Mr. Freese suggested revising Section 22.3.D.3 be applicable for the front setback only in the Lake and Stream Protection Zoning District and Natural Rivers Protection Zoning District.

Mr. Turisk referred to Section 22.3.C and noted that if a nonconforming building that contains a nonconforming use is damaged or destroyed then this section would limit a rebuild to its original configuration and on its original foundation. Mr. Turisk asked if property owners should only be allowed to build to the original footprint or should they be allowed to expand under Section 22.3.D. Mr. Borowicz stated if a building is voluntarily removed by the property owner then the new building should conform to the Zoning Ordinance. Mr. Borowicz stated that it is different if the building is destroyed. Mr. Kavanaugh agreed with Mr. Borowicz. Mr. Freese stated that the property owner should not be able to rebuild if the structure is totally destroyed or voluntarily removed. Mr. Freese stated that it should be allowed to be rebuilt only if it is in compliance. Mr. Turisk stated this would be an opportunity to gain conformance. Mr. Delana noted that a basement may not be damaged. Discussion was held. Mr. Borowicz stated that if the building is voluntarily removed then the new building should conform to the Zoning Ordinance. Mr. Freese stated that if the building is completely destroyed, then the new building should conform to the Zoning Ordinance. Mr. Kavanaugh agreed with Mr. Freese.

Mr. Turisk referred to Section 22.3.F and stated that this section addresses replacing a nonconforming building or structure with another nonconforming building or structure. Mr. Turisk stated that this scenario would need to be approved by the Zoning Board of Appeals. Mr. Turisk stated that this would limit the opportunity to replace a particular nonconformity with a new nonconformity. Mr. Freese stated that actually addresses the use of the building or structure. Mr. Delana noted that "building or structure" should be deleted from all of Section 22.3.F. Mr. Turisk reviewed the process and the standards for the Zoning Board of Appeals to review the proposed new nonconforming use. Mr. Borowicz referred to 22.3.F.1.a and suggested replacing this section with "The proposed new nonconforming use, building, or structure would not create a greater nonconformity than previously existed on the property prior to the requested replacement." Mr. Freese stated that it could be a new use that is not listed in the Zoning Ordinance. Mr. Delana suggested changing "nonconformity" to "nonconforming use". Ms. Johnson and Mr. Borowicz stated that Section 22.3.F.1.a can be deleted based on the wording of Section 22.3.F.1.c. Ms. Johnson and Mr. Borowicz agreed that Section 22.3.F.1 pertains to nonconforming uses and not nonconforming buildings or structures. Mr. Freese stated that the point of Section 22.3.F is to allow a new nonconforming use that is better than the old nonconforming use. It was decided that Section 22.3.F.a is to be deleted and the Planning Commission will review Section 22.3.F at a future meeting.

Mr. Turisk referred to Section 22.4.A and noted that this section states that the owner of nonconforming lots may hold, develop, sell or convey them as separate nonconforming lots of record. Mr. Turisk stated that the nonconforming lots of record may be developed with the caveat that development comply with the Zoning Ordinance. Mr. Turisk noted that typically these types of lots are small and there are significant lot constraints due to their small size. Mr. Turisk stated that this is currently allowed as long as they comply with minimum setback requirements. Mr. Turisk stated that this section codifies the policy. Mr. Turisk read from Section 22.4.A "Provided, however, no dimensional variance shall be granted for such lot or parcel when the need for that dimensional variance would be eliminated by combining those contiguous lots, parcels, or portions of lots or parcels as an undivided lot or parcel for the purposes of this Ordinance under Subsection B, below." Mr. Turisk stated that Section 22.4.B clarifies that if combining nonconforming lots of record results in a conforming lot then that conforming lot may be developed as any other conforming lot in Cheboygan County and that development would need to comply with the minimum applicable dimensional requirements, namely building setbacks as measured from the exterior lot lines of the new lot. Mr. Turisk stated that if combining nonconforming lots of record does not create a conforming lot, then the newly created lot may be developed as any other nonconforming lot in Cheboygan County. Mr. Borowicz asked if he owns three lots and decides to sell all three lots, will the new owners be restricted. Mr. Freese stated no they are not restricted as they are individual lots. Ms. Johnson stated that it becomes a problem when you decide to develop the lot. Mr. Freese stated that if there are two lots that are 50ft. wide and a setback variance was requested for the center lot line, the Zoning Board of Appeals would look at this as if it was self-created because the applicant has the means to eliminate the need. Mr. Freese stated that this is one of the five standards that the Zoning Board of Appeals reviews. Ms. Johnson noted that many subdivisions in Cheboygan County have established lots that are 40ft., 50ft. and 60ft. wide. Ms. Johnson stated that even in these subdivisions, the property owners would have to comply. Ms. Croft stated that there are many subdivisions that were platted in the early 1900's and the lots are assumed to be legal lots. Ms. Croft stated that this amendment is saying that they are not legal lots because a variance would be necessary to build. Mr. Freese stated that individual lots, even though nonconforming, can be built on. Mr. Freese stated that if you own two lots you can't ask for a dimensional variance on the center lot line. Mr. Freese explained that a property owner who owns two 50ft. lots can build on

one of the lots as long as he complies with the minimum setback requirements and that he can apply for a variance for any property line other than the common property line to both contiguous lots. Ms. Johnson stated that the amendment does not say that and read from Section 22.4.A "Provided, however, no dimensional variance shall be granted for such lot or parcel when the need for that dimensional variance would be eliminated by combining those contiguous lots, parcels, or portions of lots or parcels as an undivided lot or parcel for the purposes of this Ordinance under Subsection B, below." Discussion was held. Ms. Johnson stated that if a person owns two lots and wants to develop and sell the lots separately they are not able to do so. Ms. Johnson stated that this person is restricted because they own two lots. Mr. Delana stated that one lot would have to be sold. Mr. Borowicz stated that the property owner could sell one lot to someone that they know, request a variance and then buy the lot back after the variance is approved. Mr. Freese stated that you can do what you want on the two lots as long as you are not asking for a dimensional variance from the common line between the two lots. Ms. Johnson stated that she understands this but does not agree that a person would not be able to request a dimensional variance because he wants to develop two lots separately. Mr. Freese stated that this is not what is stated in the amendment. Mr. Borowicz agreed with Ms. Johnson. Mr. Kavanaugh suggested adding "shared property line" to Section 22.4.A to help make this section easier to understand. Mr. Freese stated that the wording is clear. Mr. Delana questioned if using the common lot line reference easier to understand. Mr. Turisk and Mr. Kavanaugh agreed that is easier to understand. Mr. Borowicz stated that there is no such thing as a need for a dimensional variance. Mr. Borowicz stated that there is a desire for a dimensional variance. Mr. Kavanaugh suggested reviewing with legal counsel the common line and the desire, instead of a need, for a variance.

NEW BUSINESS

No comments.

STAFF REPORT

Mr. Turisk stated that there will be a Risk Management Decision Making training that will be held from 6:00pm to 8:30pm on Tuesday, March 31, 2020 at the Littlefield Community Building in Alanson. Mr. Turisk asked that the Planning Commission members let him know if they will be available for this training. Mr. Turisk noted that the registration deadline is March 20, 2020

Mr. Turisk stated that the Planning Commission has also been invited to attend two Green Infrastructure workshops. Mr. Turisk stated that the first workshop will be held from 1:30pm - 4:00pm on March 23, 2020. Mr. Turisk stated that the second workshop will be held from 1:30pm - 4:00pm on April 24, 2020. Mr. Turisk stated that both workshops will be held at the Cheboygan Public Library. Mr. Turisk asked that the Planning Commission members let him know their availability for this training as soon as possible.

Mr. Turisk noted that binders have been distributed to the Planning Commission. Mr. Turisk stated that these binders include an application from Orion Renewable Energy for a project in Grant Township. Mr. Turisk explained that this will allow the Planning Commission more time to review the application as there is a lot of material to review. Mr. Turisk stated that the application has been forwarded to the appropriate agencies and property owners within 300ft. have been notified of the meeting and application. Mr. Turisk stated that public comments will be forwarded to the Planning Commission. Mr. Kavanaugh asked if this will be reviewed by legal counsel and if an engineer will review this application also. Mr. Turisk stated that legal counsel will attend the meeting on 03/18/20. Mr. Turisk stated that the Building Official has a copy of the application and he has a strong measure of expertise to review the technical aspects of this application. Mr. Turisk stated that he has not talked with administration yet about this application being reviewed by an engineer. Mr. Turisk stated that level of detail normally comes after the approval by the Planning Commission. Mr. Turisk stated that this is normally reviewed as part of the building permit application. Mr. Kavanaugh stated that we need someone that is experienced to review the application as there is a lot of technical information. Mr. Kavanaugh stated that he doesn't believe we should rely on people who are not experts. Mr. Borowicz stated that the technical aspect is not what the Planning Commission is reviewing. Mr. Kavanaugh stated that someone will also need to review the contracts and leases to make sure that applicant is responsible for the removal of all equipment from the site if the project ends. Mr. Turisk stated he will discuss the agreements with legal counsel. Mr. Turisk stated he will also discuss this with the applicant as they will incur the charge for the review by legal counsel. Mr. Freese stated that he believes that the Planning Commission will not be able to ask for the leases, however, there is a requirement to remove the material at the end of the life of the project and if one of the landowners requests certain things to remain then the Planning Commission may have a basis for asking for that portion of the lease. Mr. Freese stated that the applicant has provided portions of the lease for the Planning Commission to show that the land owners want certain things to remain. Mr. Freese stated that the Planning Commission should put tabs on specific sections in the binder. Mr. Freese noted that the applicant has requested a waiver on the scale of the drawings. Mr. Freese stated that they asked for 1 inch to 400 feet and none of the information that they provided is 1 inch.

PLANNING COMMISSION COMMENTS

Mr. Kavanaugh asked for an update on Heritage Cove Farm. Mr. Turisk stated he does not have any information to report at this point.

PUBLIC COMMENTS

Mr. Moore referred to Section 22.3.F and noted that use should be separate from structure. Mr. Moore stated that the building is not going to change. Mr. Moore questioned how someone would determine that a use is less nonconforming. Discussion was held. Mr. Moore referred to Section 22.4 and noted that the Planning Commission is not considering a situation with a proposed private storage building on two larger parcels. Mr. Moore stated there is no need for a common line to be discussed. Mr. Moore noted that this section states that a dimensional variance can't be granted unless the parcels are combined. Mr. Freese stated that this is not a nonconformity. Discussion was held.

ADJOURN

Motion by Mr. Borowicz to adjourn. Motion carried. Meeting was adjourned at 8:36pm.



Charles Freese
Planning Commission Secretary