



MINUTES

**THOMAS TOWNSHIP ZONING BOARD OF APPEALS
PUBLIC SAFETY BUILDING, 8215 SHIELDS DRIVE, SAGINAW, MI 48609
May 9, 2017 - 4:00 P.M.**

1. The Board of Appeals meeting was called to order at 4:00 p.m. Chairman Steve Witt.

Present: Don Milne, Steve Witt, Rene DeSander and Rod Iamurri. Also present were Dan Sika, Community Development Director and Connie Watt, Planning Assistant/Code Enforcement Officer, Kathleen Lamb of Storage America, Gary Kowalsi of Beagle Construction and four interested parties.

Absent: Mike Thayer.

2. **Pledge of Allegiance.**
3. **Approval of the Minutes.**

Motion by Milne, seconded by Iamurri to approve the minutes of the April 25, 2017 meeting with change noted on the approval of variance granted to include the statement “for a period of six (6) months or Certificate of Occupancy whichever comes first”. Also correction in the spelling of a members first name. Motion carried unanimously.

4. **Hearings:**

Sika explained that the site proposed by Storage America is located to the west of S. Thomas and Gratiot Roads. They are proposing mini-storage buildings to be A. Kathleen Lamb on behalf of Storage America is requesting a variance to allow outdoor storage at a proposed mini-storage facility enclosing the front portion with landscaping instead of a masonry wall as the ordinance requires. laid out as noted on the updated site plan. He added that our ordinance is specific that an area of masonry screening six feet (6') high must be utilized to cover outdoor storage. Outdoor storage in this case is located where the Oldenberg drain is. The area being about 100' which runs through the property and cannot have any structure built on it. If there is anything on it and the county wants to fix or

improve the drain they can do so. In lieu of constructing a masonry wall in the area, Storage America is proposing a landscape area which would screen the outdoor storage area.

Kathleen Lamb of Storage America spoke regarding the variance. She said it was decided in order to maximize the use of the property and potential loss of income on it, this area was chosen for outdoor storage since it cannot be built upon. In order to make the area aesthetically pleasing they felt this was a good option for that area. She added that the area is shown as gravel and will be maintained to insure weeds are not an issue. Sika pointed out at that time that the ordinance does require this area to be either asphalt or concrete and does not allow for gravel. Sika pointed out that the Ordinance, Section 3.14(m) does require asphalt or concrete in that area. Lamb added that they were proposing gravel there due to the possibilities of drain improvements/repairs that may require it to be torn up. Milne questioned if this would be a separate variance request? Sika added that it would be and if they wanted to use gravel they could take that up as a separate variance in the future. Iamurri asked if the stone pillar and fencing requirement would still need to be met? Sika replied that it would and it is shown on the site plan presented. DeSander requested clarification as to the size of the landscape area. Sika explained that the plan shows twenty-five foot (25') drives and a sixty-five foot (65') gravel area. DeSander questioned that the masonry wall required could not be built there due to the drain, correct? Sika explained that the County Drain controls and limits what can be built there. They may allow limited fencing, landscaping and asphalt but understand that if it has to be torn up they'd do so and not replace it but simply cover it. Milne asked if they agree to the variance could it be requested that the trees be at least six feet (6') in height as the wall requirement states? Sika said if approved they certainly could make that a stipulation. Lamb added that is what was planned, six foot (6') trees. Milne stated that this is basically a hardship case. Sika replied that any business other than farming that would potentially go in there would be restricted as to building over the drain. He said it is his understanding that the county would not allow any type of construction in that area. DeSander questioned Exhibit 5 that shows the landscaped area in the front towards Gratiot Road only. He asked if there was a plan to cover the outdoor storage from the back view also? Lamb stated that they were not proposing to do that at this time. She said if they ever did a phase two where they would extend farther back then they would most likely enclose the rear of the outdoor storage with the landscape barrier. DeSander was concerned with any future construction that may take place behind the property and viewing this area. Milne questioned if the masonry fence was only required because of outdoor storage and if there were no outdoor storage then it would not be necessary? Sika said that was correct. Witt asked for public comment but there was none. Sika noted that a letter with comments was received from Brian and Melissa Thomson, owners of the neighboring Melissa Storage.

RECEIVED APR 24 2017

Brian and Melissa Thomson
7412 W Greenleaf Ct
Frankenmuth, MI 48734

April 17, 2017

Thomas Township Board of Appeals
249 North Miller Rd
Saginaw, MI 48609

To Whom It May Concern:

We have received a letter regarding the notice of a public hearing regarding property located at 10000 Gratiot Rd which is adjacent to ours. Our property is located at the corner of Thomas and Gratiot Roads and is an inside and outside storage facility known as Melissa Storage.

The property in question is apparently owned by Storage America who is requesting a variance regarding the required fencing and gating. Based on the description offered in your letter, it appears that Storage America is planning to offer the same services as our business currently offers. The zoning ordinances created by the Thomas Township Zoning Board were created for specific purposes and are upheld by our business as well as other local businesses. Therefore, we feel that this request should be denied.

We are unable to attend the May 9, 2017 meeting to express our views but would ask that this convey our opinion. We are available for comment or questions at 989-798-2658. Thank you for your consideration in this matter.

Sincerely,

Brian and Melissa Thomson
Owners of Melissa Storage

At that time the Zoning Board of Appeals reviewed the checklist "Basic Conditions" as follows:

ZONING BOARD OF APPEALS CHECKLIST

(A variance will only be granted if all of the following Basic Condition questions are answered "yes")

BASIC CONDITIONS

The Zoning Board of Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided that all of the Basic Conditions listed below are answered "YES" and one (1) of the Special Conditions listed thereafter can be satisfied;

1. Has the Applicant demonstrated that this variance is not contrary to the intent and purpose of the Zoning Ordinance? Explain.

YES 4 NO 0

2. Has the Applicant proven that a variance will not adversely impact adjacent properties? Explain.

YES 4 NO 0

3. Has the Applicant proven that a variance would not produce a nuisance condition to nearby premises? Explain,

YES 4 NO 0

4. Is the basis for the proposed variance unique and not shared by other properties in the same Zoning District throughout the Township? (If the Board of Appeals finds that the hardship is not unique, but common, then an amendment to the zoning ordinance or a re-zoning should be pursued.)

YES 4 NO 0

5. Has the Applicant shown that a variance will not otherwise impair the public health, safety, or general welfare of the residents of Thomas Township?

YES 4 NO 0

SPECIAL CONDITIONS

When all of the foregoing Basic Conditions can be satisfied, a variance may be granted when any one of the following Special Conditions can be clearly demonstrated:

1. Are there non-economic practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this Ordinance? Explain.

YES 4 NO 0

Hardship exists on the property due to the Oldenberg drain which runs through the property.

2. Are there unique or extraordinary physical conditions that do not apply to other property or uses in the same zoning district and were not caused by and act of the applicant? Explain.

YES _____ NO _____

3. Is the variance necessary to preserve a substantial property right possessed by other properties in the same zoning district? Explain.

YES _____ NO _____

Steve Witt went through the ZBA's checklist as required to determine if the variance request meets the requirements for a variance (see attached results). The request passed the checklist so a vote to approve the variance can be made. Motion was made by Iamurri, supported by Milne to approve the variance for use of a landscape barrier consisting of six foot (6') trees, to shield the outdoor storage to be planted at both the north and south ends of the Oldenberg drain area with a sixty-five foot (65') width and a depth of twenty-five feet (25'). Motion passed unanimously. DeSander did go on record as noting that the area was still required to have asphalt or concrete not gravel and changing that requirement had not been part of the discussion.

B. Kathleen Lamb on behalf of Storage America is seeking a variance to install a six foot (6') simulated wrought iron fence and incorporate pillars into it around the perimeter of the property at 10000 Gratiot Road.

Sika explained that Storage America is requesting to substitute what is required in the ordinance regarding a six foot (6') high screened security fencing with a simulated wrought iron fence that would be six foot (6') in height and incorporate pillars along the Gratiot Road frontage. The back area would not have these pillars. Sika did show example photos of the required screened security fence as well as what is being requested via a power point. Lamb added that the storage building end caps would be faced with stone on the Gratiot Road side to make this more aesthetically pleasing. Sika noted that in the front near Gratiot Road the stone pillar and fencing requirement would still be met as noted on the site plan. Lamb interjected that they actually want to replace installing those with the utilization of the fencing and pillars along the perimeter. She added that D&M Site felt it best to show the pillars along Gratiot Road on the site plan since the variance had not been granted as of yet. Lamb felt it would not look right to have two sets of pillars and fencing in the front area. Milne asked if in the examples shown those and others as long as it is screened would meet the requirement? Sika replied it would. Milne asked what the reasoning was for not using the screened security fencing? Lamb replied that due to aesthetics, consistency of the look of their business properties and mainly safety of their clients would be the reasoning. She added that they have high standards for their storage areas and are always well maintained. Sika added that the current storage facilities were constructed at a time with no standards where you can see right into the storage area. It is his belief that when the ordinance was written it was to eliminate the blight issue and problem with unlicensed vehicles sitting on these properties. DeSander noted Section 3.14 k (2) which states that any vehicles on the property must be licensed and in good repair. He felt that should preclude any issue and taken care of it with the language in the ordinance. He felt that the fencing requested was more law enforcement oriented and aesthetically better than screened fencing required. Lamb reemphasized the concern for the safety of their

customers and the ability to see what is going on within the storage area. With screened fence safety is a big concern. DeSander asked that if he was correct that the ordinance would direct them to do a screening fence around the entire perimeter of the property? Sika replied that it would. DeSander added that if the variance is not granted they will have to have a screened security fence all around the business. Milne added that putting aside the issues of public safety or aesthetics he felt that the Planning Commission certainly would have considered these things when they came up with the language in the ordinance. He felt it was not within the power of the ZBA to change the ordinance. He felt it would void the entire thing. Witt asked who could change the ordinance. Sika explained a request could be made to the Planning Commission to review it for a text amendment if the ZBA felt they should. He added that if the variance was granted you allow Storage America the ability to use this type of fencing and any other new storage facilities that would come into the township essentially. Lamb stated again that Storage America keeps properties well maintained and increase property values around them because of how their properties are kept. Witt asked for public comment. There was none at this time. The Zoning Board of Appeals reviewed their checklist and the requested variance did not meet the checklist requirements as stated for a variance.

ZONING BOARD OF APPEALS CHECKLIST

(A variance will only be granted if all of the following Basic Condition questions are answered "yes")

BASIC CONDITIONS

The Zoning Board of Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided that all of the Basic Conditions listed below are answered "YES" and one (1) of the Special Conditions listed thereafter can be satisfied;

1. Has the Applicant demonstrated that this variance is not contrary to the intent and purpose of the Zoning Ordinance? Explain.

YES 1 NO 3

2. Has the Applicant proven that a variance will not adversely impact adjacent properties? Explain.

YES NO

3. Has the Applicant proven that a variance would not produce a nuisance condition to nearby premises? Explain,

YES NO

4. Is the basis for the proposed variance unique and not shared by other properties in the same Zoning District throughout the Township? (If the Board of Appeals finds that the hardship is not unique, but common, then an amendment to the zoning ordinance or a re-zoning should be pursued.)

YES NO

5. Has the Applicant shown that a variance will not otherwise impair the public health, safety, or general welfare of the residents of Thomas Township?

YES NO

SPECIAL CONDITIONS

When all of the foregoing Basic Conditions can be satisfied, a variance may be granted when any one of the following Special Conditions can be clearly demonstrated:

1. Are there non-economic practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this Ordinance? Explain.

YES _____ NO _____

2. Are there unique or extraordinary physical conditions that do not apply to other property or uses in the same zoning district and were not caused by and act of the applicant? Explain.

YES _____ NO _____

3. Is the variance necessary to preserve a substantial property right possessed by other properties in the same zoning district? Explain.

YES _____ NO _____

Motion was made by Mile supported by Iamurri to deny the variance requested to install a six foot (6') high simulated wrought iron fence with pillars incorporated around the property located at 10000 Gratiot Road (Storage America) as it did not meet the criteria of the ZBA Checklist. Motion passed unanimously.

DeSander did request with agreement by the remaining ZBA members, that the Planning Commission review this ordinance section for a possible text amendment.

C-Gary Kowalski on behalf of Beagle Construction is seeking a side yard variance of five feet (5') for an accessory structure constructed on the property at 4042 Mountain View Court a property zoned A-1.

Sika explained that the Township Building Inspector requires a plot plan and building plans for new constructions. The plot plan shows the building and the distances of all the setbacks listed on it. In this case, the side yard setback for A-1 zoning where the structure is located, would be twenty feet (20') from the side property line. The building was thought to be constructed based on what was turned in. The Building Inspector was contacted after construction of the accessory building and the person filing the complaint stated that the building was located too close to the side property line. The original petition for a variance request by Beagle Construction stated a variance request of two feet and ten inches (2' 10"). The Building Inspector and an employee from Beagle Construction met on the property and did an accurate measurement and found the distance for the variance needed was actually five feet (5') because the building was fifteen feet (15') from the side property line. This is an after-the-fact request.

Gary Kowalski spoke on behalf of Beagle Construction. Witt questioned how this happened? Kowalski state he really doesn't know. The property had been staked and the print (plot plan) was correct. He said there was no gain for anyone to move it closer. Iamurri asked if there was any objection from the neighbors? Kowalski stated that the neighbor next to this home sent a nice letter stating they are okay with the building location. He added they have received no other negative comments from any other neighbors. Iamurri added that it was just an inadvertent mistake. Witt noted that on the north side it appears a lot has a building in the same position. Witt asked for public comment. Mr. Duane Kemerer of 7525 Geddes Road, Saginaw, Michigan addressed the board. He asked if isn't supposed to be the job of the Building Inspector to measure before the concrete is poured? Sika replied that the Building Inspector relies on the plot plan and stakes. There is no requirement for a survey. In lieu of having a survey done each time we rely on the builder. Kemerer added that he always thought he measured from the property line to the foundation before it was poured. Sika said once again the Building Inspector relies on the contractor due to the fact that we don't require a survey. There is no specific known property line at this time

when he goes out there for him to measure from. He goes strictly by the plot plan. The same for a new house construction. Kemerer said he understood and mistakes get made. He just thought that is what the Building Inspector did. Sika stated again with no survey there is nothing to measure from in most cases. Kemerer said he has no problem with and mistakes get made. DeSander said then anyone can build where they want to, too close to the property line and come to us after the fact and we should be okay with it. If we approve this variance then we are setting a precedence. Milne stated it could've happened many times already. Iamurri said there could be many we just don't know about them because we have never gotten any complaints. Sika said keep in mind that any building under 200 square feet is not required to have a building permit. This doesn't mean you circumvent zoning but we have no plot plan for these and cannot do inspections on them. Witt asked for further public comment. There was none. A letter was received from LaVerne and Diana Kamp, of 4066 Mountain View Court, Freeland, Michigan in favor of the variance. Public comment was closed.

RECEIVED MAY 03 2017

May 1, 2107

From:

LaVerne and Diana Kamp
4066 Mountain View Ct
Freeland, MI 48623

To:

Thomas Township Zoning Board of Appeals
249 N. Miller Road
Saginaw, MI 48609-4896

To Whom this may concern:

This letter is regarding the variance request made by Beagle Construction. The variance requested is regarding the property located at 4042 Mountain View Court, Lot 20 Parcel #28-12-04-4120-000. We own the property adjacent and immediately north of said property. (Lot 19) We share a common east west property line and the variance requested affects our property. Please be notified that we have no objection to the Zoning Board granting the variance as it causes us no hardship. We recommend that the variance be approved.

Sincerely,

LaVerne Kamp Diana Kamp

LaVerne and Diana Kamp
989-401-3788

DeSander said if this is approved he feels they are doing spot enforcement. He doesn't feel it is unique but precedence setting. Kowalski added that it was accidental. It is not as if he wanted to build a bigger building on the property. Kemerer interjected, you guys are thinking about having him tear that building down or move it? Witt said you will know that as soon as the decision is rendered. DeSander if we approve this then why have the requirement at all. Witt added that it could be five feet (5') today then three feet (3') by someone else tomorrow. Where would it end? You would not need any restriction. Iamurri suggested a requirement to have the Building Inspector be required to measure. He felt maybe a requirement of a survey would be necessary. DeSander noted that this is a subdivision so at some time there was a survey completed and stakes in the ground from it. Kowalski added that he works in a lot of townships and the inspectors do measure at the time of the footing inspection. He added that it was about two (2) years ago the same inspector from Thomas Township questioned their stakes on a house they were building and they have to excavate further to move the house back a foot or so. He did add that at the time this accessory structure was being dug the Building Inspector was out of town at the time. . The Zoning Board of Appeals reviewed their checklist and found that the requested variance did not meet the requirements for receiving a variance. The first question did not receive a yes vote. It received a 2 to 2 vote tie. It did not pass the test by getting the required yes vote.

ZONING BOARD OF APPEALS CHECKLIST

(A variance will only be granted if all of the following Basic Condition questions are answered "yes")

BASIC CONDITIONS

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1. Has the Applicant demonstrated that this variance is not contrary to the intent and purpose of the Zoning Ordinance? Explain.

YES 2 NO 2

2. Has the Applicant proven that a variance will not adversely impact adjacent properties? Explain.

YES _____ NO _____

3. Has the Applicant proven that a variance would not produce a nuisance condition to nearby premises? Explain,

YES _____ NO _____

4. Is the basis for the proposed variance unique and not shared by other properties in the same Zoning District throughout the Township? (If the Board of Appeals finds that the hardship is not unique, but common, then an amendment to the zoning ordinance or a re-zoning should be pursued.)

YES _____ NO _____

5. Has the Applicant shown that a variance will not otherwise impair the public health, safety, or general welfare of the residents of Thomas Township?

YES _____ NO _____

SPECIAL CONDITIONS

When all of the foregoing Basic Conditions can be satisfied, a variance may be granted when any one of the following Special Conditions can be clearly demonstrated:

1. Are there non-economic practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this Ordinance? Explain.

YES _____ NO _____

2. Are there unique or extraordinary physical conditions that do not apply to other property or uses in the same zoning district and were not caused by and act of the applicant? Explain.

YES _____ NO _____

3. Is the variance necessary to preserve a substantial property right possessed by other properties in the same zoning district? Explain.

YES _____ NO _____

Motion made by DeSander, supported by Milne to deny the side yard setback variance request by Beagle Construction of five feet (5') for the accessory structure located at 4042 Mountain View Court as it did not meet the criteria of the ZBA Checklist. Motion passed unanimously.

6. **Discussion** – None.
7. **Old Business** – None
8. **New Business-None**
9. **Adjournment**-a motion was made by Milne and supported by Iamurri for adjournment of the meeting at 5:10 p.m.

Respectfully submitted by Connie Watt, Planning Assistant/Code Enforcement Officer.