

**Texas Township
Zoning Board of Appeals
Minutes of Regular Meeting**

March 22, 2023 – 6:00 P.M.

Present: Frank Machnik (Chair); Michael Bakker (Vice Chair); Michael Corfman; Ken Toy; Michael Mair; Keith Brown (Township Attorney); John Lovely (Township Planner and Zoning Administrator); Applicants.

Absent: None.

Item 1. Call to Order

The meeting was called to order at 6:00 p.m. by Machnik.

Item 2. Roll Call

Mair called the roll. All members present.

Item 3. Election of Officers.

- Chair
 - Mair nominated Machnik, supported by Corfman. Board elected Machnik Chair 5-0.
- Vice Chair
 - Machnik nominated Bakker, supported by Toy. Board elected Bakker Vice Chair 5-0.
- Secretary
 - Machnik nominated Mair, supported by Corfman. Board elected Mair Secretary 5-0.

Item 4. Approval of Minutes

The ZBA reviewed the minutes of the October 26, 2022 meeting. Machnik moved to approve the minutes, subject to discrepancies being resolved in favor of the recording, supported by Mair. Motion carried 5-0.

Item 5. Review and Approval of the 2023 Meeting Schedule

Lovely displayed the proposed 2023 meeting schedule and noted that he will be out of the office for the June 28th meeting and will look to schedule a special meeting if a case is pending for that date. Mair moved to approve the meeting schedule, supported by Machnik. Board approved 2023 meeting schedule, listed below, 5-0.

Zoning Board of Appeals 2023 Meeting Dates
Meeting: 4th Wednesday | 6pm

Meeting Type	MTG Date	Deadline
ZBA Meeting	Jan 25	Dec 28, 2022
ZBA Meeting	Feb 22	Jan 25
ZBA Meeting	Mar 22	Feb 22
ZBA Meeting	Apr 26	Mar 29
ZBA Meeting	May 24	Apr 26
ZBA Meeting	Jun 28	May 31
ZBA Meeting	Jul 26	Jun 28
ZBA Meeting	Aug 23	Jul 26
ZBA Meeting	Sep 27	Aug 30
ZBA Meeting	Oct 25	Sep 27
ZBA Meeting	Nov 15*	Oct 18
ZBA Meeting	Dec 20*	Nov 22
ZBA Meeting	Jan 24, 2024	Dec 27

NOTE: Deadline is 4 weeks prior to meeting.

****Adjusted from normal schedule.***

Item 6. New Business

Introductory Remarks

In the presence of the applicant, Machnik began with a general statement of the ZBA’s authority and the role of the Township Zoning Ordinance. He discussed the history of the Zoning Enabling Act and the Township Zoning Ordinance, and he discussed the function and power of the ZBA. He discussed the standards for variances that are set forth in the Zoning Ordinance, including a showing of (1) a practical difficulty, (2) that the request is not based on a self-created hardship, and (3) that the request is solely based on the unique characteristics of the property.

He also explained the requirements of establishing a “practical difficulty,” which are that (1) the Zoning Ordinance unreasonably prevents the owner from using the property for a permitted use; (2) relaxation of that requirement would provide substantial relief for the applicant’s problem; and (3) granting the request would be consistent with justice afforded to all property owners. He further explained that the ZBA cannot consider financial hardship or personal inconvenience in deciding whether to grant or deny a variance.

A. ZBA Case 23-01

Applicant: Manjinder Benipal

Address: 6084 S 12th Street

Parcel #: 09-04-476-075

Request: A variance for relief from the 50 foot setback required for a front yard abutting a county road.

The ZBA heard presentations from Administrator Lovely and the Applicant.

Lovely summarized his report.

The applicant, Manjinder Benipal, requested a variance from the required front yard setback for his property, 6084 S 12th Street. Shawn Bates of Dan Vos Construction company submitted the application and prepared materials on behalf of the owner and Friendship Animal Hospital (FAH). According to Township records, the lot is approximately 107,463 square feet including area within the public right of way, and the provided site plan indicated that the lot is approximately 86,806 square feet excluding area within the public right of way. Lovely stated that FAH is on the end cap of the strip mall. Due to its success, FAH wishes to expand into the setback on the NW side of the building.

Unique physical circumstances. Lovely stated that the lot is unique, with two street frontages along the east and northwest property lines - S 12th Street and Texas Drive, respectively. The orientation of the roads and property lines create a semi triangular/V-shaped lot. In addition, both roads are County Primary Roads, which currently have 66-foot-wide public rights of way and an additional 17-feet on either side to be dedicated as preserved right of way area for future expansion in accordance with Sections 36-2.2 and 36-3.4.2.C of the Zoning Ordinance.

Conformity to the ordinance is unnecessarily burdensome. Lovely stated that conformity could be considered burdensome to the property. The existing building does not contain room for the animal hospital’s unique space needs. FAH is a special exception use in the district and is established as a reasonable use of the property. Denial of the variance could likely prevent continuation of the use.

Minimum variance necessary for substantial justice. Lovely stated that the request is the minimum needed to grant relief. The fire department indicated that the area in front of the building is a fire lane and cannot be expanded into. Staff indicated that the rear of the building also cannot be expanded into because of dumpster enclosures and employee parking. The buildings to the southwest and to the north have setbacks of approximately 32 feet from the preserved right of way, so the variance would be in line with these neighboring properties.

The problem is not self-created. Lovely stated that when the property was initially developed between 2004 and 2006, the owner of record was S&R Builders, LLC. In February 2013, the property was conveyed to the current owner, meaning that the current owner did not develop the site initially. The site layout was designed to maximize building area while balancing parking and other site development requirements under the original owner. With the original approval dating back nearly 20- years, all potential uses or market demands were likely not considered. In 2014, the addition to the building closest to S 12th Street was approved at the maximum allowable size without encroaching into the front setback. Parking spaces were removed to accommodate the addition of the building in accordance with parking required by ordinance for the current or projected uses at that time. This previous building addition sheds light on the tentative nature of planning for these multi-tenant commercial spaces and how new permitted or special exception uses can necessitate expansions to what was previously designed/approved. The actions of the current or previous property owners did not cause the current problem. The current problem is caused by the uniquely shaped double frontage lot along two county primary roads with preserved rights of way, which all contribute to limiting the buildable area of the lot. The success of the FAH is another contributing factor to the current problem, but staff does not consider this to be self-created in this context. Based on the physical challenges of this particular property and other reasons stated above, the problem is not self-created.

Possible actions. Lovely stated that the ZBA could move to approve as requested, approve with alternative relief or conditions, move to deny, or table to more information.

Board members asked Lovely questions.

Mair asked about the importance of the preserved right of way. Lovely responded that the preserved right of way exists in case there arises a need to add lanes. But Lovely noted that the 50 foot setback here seems a bit much in light of the existing buildings. Mair asked how many lanes are in the 66 foot zone. Lovely stated that 2 lanes could be added in that area and that there would continue to be room for sidewalks. Mair asked for examples of other county primary roads. Lovely responded that 6th Street, 8th Street, Texas Drive, 12th Street, and Q Avenue are primary roads.

Corfman supported Lovely's explanation of the preserved right of way, and explained how the Planning Commission would approach issues relating to the preserved right of way. He

explained that the Zoning Ordinance “cart blanche” incorporated the preserved rights of ways on primary roads.

Bakker asked how the 66 foot rights of way work. Lovely stated that it measures from the center of the road. The extra 17 feet on each side here belongs to the County but the Township incorporates it. Lovely confirms that the applicant property has a 100 foot right of way on both frontages.

Corfman notes his belief that the building was built after the 50 foot setback was put in place. The building to the south and the building to the northwest are older.

Bakker asked why the additional 17 foot setback was added to the property. Corfman stated that it is because the Road Commission considers these roads primary roads.

Shawn Bates of Dan Vos presented on behalf of Applicant.

Bates thanked the Township and the staff for its help in preparing the application. Bates stated that FAH had been at the property for a long time and that demand was high. Looking to the future, a dire need to expand exists. Many options were looked at to determine the minimum variance needed for expansion.

Machnik asked Bates whether the property needed to have an animal hospital, as opposed to another business, and asked whether, if the variance was denied, the Applicant could rent the property to another business if FAH needed to move. Bates said yes, theoretically; although that is not the preferred option. Machnik stated that he understands, but that the ZBA must address whether the zoning ordinance unreasonably prevents the property owner from using the property for a permitted use. He stated that the ZBA does not have the authority to rewrite the Ordinance. Machnik stated that he was hung up on that first element of the legal test after he extensively reviewed the caselaw. He asked Bates how a denial would prevent the Applicant from using the property for a permitted use. Bates stated that there is a lot to be said for having a long-term and reliable tenant but acknowledged that the Board could not consider those financial issues. Bates stated that FAH provides a valuable service to the community, including valuable employment opportunities. Machnik agreed, but stated that the ZBA is not a court of equity and must apply the Ordinance as written. Bates stated that, regardless of the tenant, the Applicant would seek to minimize impact on the rights-of-way. Bates stated the property is unique because of the shape and the dual frontages and that a lot of preparation work went into the application. Machnik stated that the plan is excellent but-for the Ordinance infraction and that the presentation was economic.

Bakker asked whether FAH owned or leased the property. Response that FAH leases the property and the application was made by the landowner.

Mair stated that, in 2014, the building met the setback requirement. He asked if the building could have a practical use if it continued to meet the 50 foot setback. Bates stated that the needs of FAH required the expansion. Mair asks whether Applicant is willing to compromise. Bates stated that other options are impractical. Lovely stated that fire department review indicates that the proposed expansion is the only option.

Machnik noted that FAH has functioned on the property, but just cannot expand there.

Bakker asked whether both buildings on the property could be expanded 20 feet and new fire lanes be created. Lovely stated that there is not enough parking on the site to do that, and that it is currently short 1 or 2 parking spots for the proposed addition, but final calculations still need to be reviewed.

Mair asked if there is unoccupied space in the middle of the building. Applicant stated that there is. Mair asked who the adjacent tenant is next to FAH. Applicant stated an animal grooming business is there. Mair asked if it had been considered to have that business move and FAH occupy that space. Applicant stated that a Chinese restaurant was in discussions to use the vacant space. Applicant stated that vacancies do not occur often at the property.

The Board discussed the application.

Machnik stated that he spent considerable time studying the Zoning Enabling Act and its case annotations. He was stuck on the first element of the variance standard, that the Ordinance unreasonably prevents the property from being used for a permitted use. He cited several cases. First, *Norman Co. v City of East Tawas*, 263 Mich App 194 (2004), which relied on *Muskegon Area Rental Association v Muskegon*, 465 Mich 456 (2001), to summarize the unreasonable use standard. Machnik quoted from *Norman Co.*, stating “Plaintiffs may still use their real estate for the same purpose as they had before the variance denial, and, although they may be burdened, plaintiffs are not burdened unnecessarily because the ordinance is in place to maintain the community's aesthetic value and ensure safety, which are cognizable necessities.” Here, FAH has been operating in the space for years and may continue to do so. It just cannot expand. But this does not prohibit the landowner from renting the property, as it is being used for. Machnik also cited *Janssen v Holland Charter Twp. Zoning Bd. of Appeals*, 252 Mich App 197 (2002), and quoted that, “[t]o conclude that a property owner has established unnecessary hardship, a zoning board of appeals must find on the basis of substantial evidence that (1) the property cannot reasonably be used in a manner consistent with existing zoning, (2) the landowner's plight is due to unique circumstances and not to general conditions in the neighborhood that may reflect the unreasonableness of the zoning, (3) a use authorized by the variance will not alter the essential character of a locality, and (4) the hardship is not the result of the applicant's own actions.” Machnik noted that the property is flat and that the topography is not a problem. Machnik agreed that the variance would not alter the essential character of the locality. But, he stated that the original builder that built the two strip malls built them with the setback in place,

and that could be attributed to the current owner. And he cannot get past that the Ordinance does not prevent the property owner from using the property for a permitted use.

Corfman said that, from a Planning Commission perspective, if the neighboring buildings did not already encroach into the preserved right-of-way, he would have a tougher time with the proposal. Expansion of Texas Drive is already tough because of the existing neighboring buildings. So he had an easier time thinking about the proposal than Machnik. But Corfman agreed that the Township was not prohibiting the landowner from using the land for a permitted use. His hang up was that, even though the preserved right of way is in the Zoning Ordinance, and the Township did not know what the eventual growth would look like when they were incorporated it into the Ordinance, if only the 66 foot right of way is considered, only 2 feet would remain.

Machnik noted that, if the Township keeps growing and Texas Drive is expanded, the proposed building would not be far from the street. He stated that the existing neighboring buildings were grandfathered in and the Board cannot consider them.

Bakker noted the 50 foot setbacks and that the building was expanded in 2014. He noted that he was struggling with what is a reasonable or permitted use of the property. He noted that the property is being used as a strip mall, which is a reasonable use, and one where tenants come and go. Occupants of strip malls often outgrow their space and then build their own space. He stated that, if the variance is approved, FAH could need to expand again in 5 years. He asked why the Board would not also grant a variance for the other side of the building at some point.

Machnik noted that the property is designed for a rental space and that there is no prohibition saying that FAH cannot continue to rent the space. If it outgrows the space, the owner could re-rent the property. The reasonable use here is for the property to be used for rental space. It is up to the tenant to decide whether it wants to stay.

Bakker asked whether the Township had considered other applications involving the expansion of a business. Lovely stated that he could not find any in the last 20 years. Machnik stated he could not remember any since he joined the Board in 2010. Corfman stated that the legacy businesses stayed within the original 66 foot right of way and that no one had since come forward seeking an encroachment into the preserved right of way. Bakker asked about precedent, asking about what the Board would do if it was presented with an application to expand the other side of the building. Machnik stated that approval may set a precedent that variances are approved for economic reasons.

Mair noted that the problem is that Texas Drive is a county primary road and the county made it that way, not the Township.

Toy noted concurrence with pieces of the other members' comments, including that Texas Drive will not likely be able to expanded for other reasons, but that the proposal appears economic and the Board cannot consider those arguments.

Invited to speak again, Bates noted that the existing neighboring buildings already block the expansion of Texas Drive, and he noted that the building would still be 31 feet from the preserved right of way line. Mair asked if the expansion would not encroach 2 feet into the preserved right of way.

Motion to Deny.

Machnik moved to deny the variance because practical difficulty had not been shown, Applicant did not show that not granting the variance would unreasonably prevent the property owner from using the property for a permitted use. The animal hospital may continue to use that location but just cannot expand. And if FAH chooses to move, the property is still available as a rental property, which is its existing use. Bakker supported the motion. Motion passed 5-0 by roll call vote.

Item 8. Board Member Comments.

ZBA members and Lovely discussed the staff report and their visions for what the reports should reflect.

Item 9. Public Comment

James Szybala, 4836 Golden Ridge Trail, which is diagonal to the property. Szybala asked a hypothetical about a past proposal for a gas station at the property in the event that the variance at issue at this meeting had been granted.

Item 10. Adjournment

There being no further business, Machnik moved to adjourn, supported by Bakker. Motion carried 5-0.