



# ROBINSON TOWNSHIP ZONING BOARD OF APPEALS

Ottawa County, Michigan

February 28, 2017

Meeting called to order at 5:31 p.m. by Vice Chair Rich Saddler.

Present:	Rich Maike, Chair	Absent:
	Rich Saddler, Vice Chair	Shannon Felgner, Member
	John Wood, Alternate Member	
	Bill Maschewske, Member	
	Briana Fowler, Secretary	

Three (3) applicants from Bay Park Sapphire, LLC:  
Mike Boes  
Lindsay Boes  
Dalane Vandenberg

Ron Bultje, Township Attorney  
Kathy Kuck, Township Supervisor  
Brian Werschem, Zoning Administrator  
Christine Saddler, Township Clerk  
Matthew Pelt, Township Resident  
Tom TenBroeke, Planning Commission Member

## **Reading and Approval of Last Meeting Minutes**

The January 31, 2017 draft of the meeting minutes was discussed. There was an error as to who called the meeting to order. The minutes should read Rich Saddler, not Rich Maike. Rich Saddler also suggested adding Ms. Boes' first name to the minutes. Therefore, Lindsay Boes will be added to the minutes. Briana Fowler will make the corrections. A motion was made by Rich Saddler to accept the minutes with corrections and seconded by Rich Maike. Motion carried unanimously.

## **Bay Park Sapphire, LLC Authorization and Variance for a Sign**

Bill Maschewske made a motion to remove from the table and put back on the floor the variance requested by Bay Park Sapphire. John Wood seconded the motion. Motion carried unanimously.

Brian Werschem, Robinson Township Zoning Administrator, stated he had additional information regarding the request for the variance to share with the ZBA in order to assure the ZBA applied the Zoning Ordinance correctly to the variance request. An extended discussion followed.

Rich Saddler, Vice Chair, read the authorization as approved by the ZBA at the January 31, 2017 meeting.

Rich Saddler, Vice Chair, read the motion for the variance from the ZBA meeting on January 31, 2017.

Ron Bultje stated, "I really think the way the ZBA was looking at it before is accurate. The fuel pricing is separate from the business sign. I think the gasoline station is allowed the display of gasoline . . . but the message boards and electronic message boards cannot exceed 25 square feet."

Mike Boes, applicant, stated that everywhere else their proposed signs are considered business signs and nothing more.

Dalane Vandenberg stated fuel pricing has never been considered part of an electronic message board. She stated the only electronic message center is at the bottom of the sign on M45, which is being considered part of the business sign by this Township.

Rich Maike, Chair, indicated the ZBA needs to decide and maybe the applicant needs to decide what is being considered for the variance.

Bill Maschewske stated he believes the ZBA interpreted the variance correctly the first time, and he does not see any benefit to redefine the variance in another way. The applicant is requesting more electronic message boards than permitted by the Zoning Ordinance; therefore a variance from the ZBA is required.

Ron Bultje indicated that if the applicant removed the bottom electronic message board, and if one fuel pricing sign is included as part of the business sign, then the second fuel pricing sign is allowed because the Zoning Ordinance allows for an additional display of fuel.

Rich Maike asked if the Overlay District applies and would it have any effect on the signs.

Brian Werschem stated the Overlay District defines the signs but not limitations.

Rich Maike made a motion to table the discussion until the ZBA can clearly understand what the Zoning Ordinance states, what is allowed, and what the applicant is asking for. No one seconded the motion. Therefore the motion did not pass.

Bill Maschewske agreed Rich Maike brought up a good point. When the request came to the ZBA it was not clear what was being asked for by the applicant. The ZBA did not know the portion on the bottom of the sign on M45 contained an electronic message board.

Ron Bultje stated the applicant showed the Planning Commission and the ZBA what they wanted to do. The applicant is specifically asking for the signs they are presenting. Their application is clear to act on. There are some moving parts, and that allows for the removal of the bottom panel. The second set of electronic fuel prices could be part of the second business sign and allowed. That opens a possibility without a variance. Ron Bultje believes the applicant's understanding and the Township's definition is not the same. Robinson Township's definition states if the bottom portion of the sign is considered part of the business sign then the fuel pricing becomes the electronic message board needing the variance because there are two such fuel pricing signs. The electronic component at the bottom of the sign would be consistent with the business sign and would need to comply with the authorization of 187.25 square feet. Ron Bultje indicated the applicant is entitled to a variance decision pertaining to its application before the ZBA.

Mike Boes stated that if he could have laid the store out how he wanted there would not be an issue, but because of the overlay district he feels his business needs an identifier sign. Mike Boes stated his fueling station makes money on both gasoline and the products they choose to sell in the convenience store.

Dalane Vandenberg stated the Zoning Ordinance, the law, is written to allow us to have the gas prices on each sign.

Ron Bultje reminded the ZBA they granted the authorization on January 31, 2017. The ZBA needs to make a decision on the variance and the applicant will be able to decide at a later date what their second electronic message board is. Ron Bultje also stated that if the ZBA decides to allow the variance for the second message board, the ZBA will also need to take into account where it is located.

Mike Boes stated the sign is the way it is based on where the Planning Commission wanted the sign on M45 placed.

Rich Saddler stated the authorization from the ZBA was for a total of 187.25 square feet for business signs. The ZBA is now looking at Section 4.44(K) to allow more than one electronic message board per lot. The applicant has two pricing signs. If the applicant moved their message board up then the variance would need to change to accommodate the size of the message board exceeding 25 square feet since the electronic message board on the bottom (i.e., the hotdog sign) is 18 square feet without the size of the fuel pricing.

Bill Maschewske indicated the authorization was based on the material submitted to the ZBA, and does not automatically give the applicant 187.25 square feet to work with.

Ron Bultje again stated the ZBA needs to deal with the variance request for an additional (second) electronic message board, and if the variance is granted then the location of the second electronic message board should also be acceptable as submitted in the applicant's plans. The ZBA should not worry about the location of the second message board; the location is illustrated in the plans. Brian Werschem would have full authority to permit the variance as is, if the variance is approved. Ron Bultje stated, "My thought is a portion of the sign is an electronic message board and the other is part of the business sign, and it would be approved as presented if the variance is granted."

Rich Saddler asked for further discussion, and no one had further discussion so the five variance criteria were reviewed and discussed by the ZBA.

#### **Robinson Township Zoning Board of Appeals – Variance Request Outcome**

The ZBA reviewed and considered the following five factors/standards contained in Section 40.6(A) of the Zoning Ordinance pertaining to the applicant's request for a variance for an additional electronic message board displaying fuel prices.

The five factors/conditions and the discussion relating to the factors/conditions are as follows:

1. There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to the intended use thereof, that do not apply generally to other properties or classes of uses in the same zone.
  - a. Briana Fowler reviewed the points discussed by the ZBA at the meeting on January 31, 2017.
  - b. Bill Maschewske stated the old zoning ordinance put most commercial properties on corners.
  - c. Ron Bultje stated the extraordinary circumstances could potentially be the combination of the corner lot, complications of the overlay district, and patrons not being able to see signage from the one sign on M45.
  - d. Roll Call Vote: Briana Fowler – Yes, John Wood – Yes, Rich Maike – Yes, Rich Saddler – Yes, Bill Maschewske – No.
  
2. Such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant granting a variance.
  - a. Briana Fowler reviewed the points discussed by the ZBA at the meeting on January 31, 2017.
  - b. Bill Maschewske stated this issue is a self-inflicted problem because the sign could have been placed on the corner on an angle. Mike Boes stated the sign was not put on the corner because the lot is too short and the sign would have been too close to the road. Bill Maschewske stated the applicant had a chance to purchase

and rezone additional property and if this would have happened as planned in his opinion it would have solved the problem at hand. Bill Maschewske also stated the traffic coming down 120<sup>th</sup> is going to be local traffic and they will know what is being sold at the fueling station. Mike Boes agrees but stated the patron will still want to know what the fuel prices are.

- c. Roll Call Vote: Briana Fowler – Yes, John Wood - Yes, Rich Maike - Yes, Rich Saddler - No, and Bill Maschewske – No.
3. Such variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of the Zoning Ordinance or the public interest.
    - a. Briana Fowler reviewed the points discussed by the ZBA at the meeting on January 31, 2017.
    - b. Ron Bultje stated the second electronic message board for the display of fuel pricing is significantly smaller than the 25 square feet allotment.
    - c. Roll Call Vote: Briana Fowler – Yes, John Wood – Yes, Rich Maike – Yes, Rich Saddler – No, and Bill Maschewske – Yes.
  4. The condition or situation of the property or the intended use thereof is not of so general or recurrent a nature as to make reasonably practicable a general regulation for such condition or situation.
    - a. Briana Fowler reviewed the points discussed by the ZBA at the meeting on January 31, 2017.
    - b. Bill Maschewske and Ron Bultje informed the ZBA that a Yes vote pertaining to factor #4 is actually a vote against granting the variance.
    - c. Roll Call Vote: Briana Fowler - No, John Wood - No, Rich Maike - No, Rich Saddler - Yes, and Bill Maschewske - Yes.
  5. Any exceptional or extraordinary circumstances applying to the property in question are not self-created.
    - a. Briana Fowler reviewed the points discussed by the ZBA at the meeting on January 31, 2017.
    - b. Ron Bultje stated the applicants have reacted in accordance with the requirements of the Zoning Ordinance.
    - c. Roll Call Vote: Briana Fowler - Yes, John Wood - No, Rich Maike - Yes, Rich Saddler - No, and Bill Maschewske - No.

Ron Bultje stated that since the fifth factor was not found to be met, the ZBA cannot consider a motion to grant the variance requested by Bay Park Sapphire, LLC because not all five factors have been met. Rather, the ZBA will need to consider a motion to deny the variance because the

fifth factor was not met; including information as to why members of the ZBA believe the fifth factor was not met.

Rich Saddler stated factor #5 has not been met because there are no exceptional or extraordinary circumstances applying to the property in question and the issue regarding the signs is self-created by the applicant because the applicant could have chosen to place their business sign on an angle, on the corner of M45 and 120<sup>th</sup>. Rich Saddler also stated that the fifth factor was also not met based on his personal research; he drove by 107 different gas stations and only eleven of them had two signs. The fueling stations were in West Olive, Kalamazoo, Flint, Lansing, etc. Rich Saddler stated the statistics from his personal research/survey indicate only 11% of fueling stations have two signs. Four of the eleven fueling stations who had two signs were located on interstates. Rich Saddler stated, "I feel this issue is self-created and there are other configurations possible."

John Wood stated factor #5 has not been met because there are no exceptional or extraordinary circumstances applying to the property in question and the issue regarding the signs is self-created by the applicant because the issue is the electronic message board. If the electronic message board was not included in the sign then the increase in the square footage would be adequate for the applicant.

Bill Maschewske stated factor #5 has not been met because there are no exceptional or extraordinary circumstances applying to the property in question and the issue regarding the signs is self-created by the applicant because if the sizes of the total business signs and electronic message boards were adjusted such to meet the 25 square feet allotment then the applicant would be able to have both electronic fuel pricing signs. Bill Maschewske went on to say, that "if those message boards on the M45 sign are combined and meet the 25 square feet allotment then the applicant is still allowed the fuel pricing sign on 120<sup>th</sup>".

Ron Bultje clarified what Bill Maschewske was saying by stating that if the applicant could adjust the size of the two business signs to meet the Zoning Ordinance requirements then both signs could still have fuel pricing. Bill Maschewske agreed.

Bill Maschewske made a motion to deny the request to grant a variance to Bay Park Sapphire, LLC for a second electronic message board on the basis that factor five of Section 40.6(A) of the Zoning Ordinance had not been met based on the personal research/survey done by Rich Saddler, the point made by John Wood that the issue was self-created by the applicant because if the electronic message board displaying the product could be eliminated there would be no need for a variance of a second electronic message board, and the point by Bill Maschewske that the applicant could reconfigure the size of the electronic message board to still include fuel pricing on both streets. The motion was seconded by John Wood.

Roll Call Vote:

Briana Fowler - No

John Wood - Yes

Rich Maike - No

Rich Saddler - Yes

Bill Maschewske – Yes

The motion to deny the variance was passed.

**Any and All Other Business That May Come Before the Board**

The next ZBA meeting is March 7<sup>th</sup> according to Brian Werschem.

**Adjournment**

Rich Maike made a motion to adjourn the meeting and seconded by John Wood. Motion carried unanimously. Meeting adjourned at 8:05 p.m.

Respectfully Submitted,  
Briana Fowler  
Secretary of the Robinson Township Zoning Board of Appeals

Approved \_\_\_\_\_