

**CITY OF LINDEN
ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES**

Wednesday, October 12, 2022

7:00 p.m.

CALL TO ORDER

The regular meeting of the Linden Zoning Board of Appeals was called to order at 7:02 p.m. by Chairperson Scott Ward. The meeting was held within Council Chambers, on the lower level of the Mill Building located at 201 North Main Street, Linden, Michigan.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all present.

ROLL CALL

PRESENT: Scott Ward, Esther McDaniel, Daniel McComb, Christine Kinyon, Daniel Cusson

ABSENT: Betty Ciesielski

OTHERS PRESENT: Ellen Glass, City Manager; Adam Young, City Planner/Zoning Administrator; Kristyn Kanyak, Deputy Clerk

MINUTES APPROVAL

Motion by Kinyon, second by McDaniel to approve the minutes of the May 24, 2022 Special Zoning Board of Appeals Meeting. Motion carried 5-0.

PUBLIC HEARING

(A) ZBA-04-22 Request for Use Variance: 152 West Rolston Rd.

Ward opened the public hearing at 7:08 p.m.

Young reviewed the use variance request, as well as the purpose of the public hearing and notices provided. Young explained the membership and voting aspect of the ZBA Board, to grant use-variance approval. Kanyak verified no written correspondence was received.

Monica Larner, the applicant residing at 152 West Rolston Road was present, introduced herself; explained reasoning for her request; how she got started with the cattle dog breed and discussed her non-profit rescue. Larner read from a written statement from her lawyer aloud, that was included within the meeting packet.

Suzanne P. of 5625 Tall Oaks Road, Waunakee, Wisconsin, a member of Larner's Board, provided public comment.

Craig Hatch residing at 1505 West Rolston Road, provided public comment.

Kerry Harris residing at 202 West Rolston Road, provided public comment.

Ward closed the public hearing at 7:22 p.m.

CITIZENS' COMMENTS

None.

COMMUNICATIONS

(A) 2023 Meeting Schedule

Kanyak confirmed the Board's meeting schedule for the upcoming year.

UNFINISHED BUSINESS

None.

Ward questioned the installation timeline of the State Bank Kiosk signage the ZBA reviewed at a previous meeting.

NEW BUSINESS

(A) ZBA-04-22 Request for Use Variance: 152 West Rolston Rd.

Young reviewed his Staff Report: We are in receipt of an application submitted by applicant and property owner Monica R. Larner requesting a use variance for a proposed animal rescue shelter (AuCaDo Rescue Mid-Michigan) on her property located at 152 West Rolston Road. The property is zoned R-2, Single-Family Residential District. According to the ZBA application, the applicant has operated a non-profit, State-licensed animal shelter named AuCaDo Rescue Mid-Michigan out of their former residence (outside of Linden) for some time. The applicant intends to relocate this animal shelter to their new residence in Linden and, according to the application form, intends to house up to 6 rescued Australian Cattle Dogs at a time. The City of Linden Zoning Ordinance does not define or address animal shelters. However, it does define a "kennel," as follows (see Section 154.007): Kennel: Any place or premises where three or more adult dogs, cats, or other domestic pets are maintained, boarded, bred, or cared for in return for remuneration, or are kept for the purpose of sale.

The applicant's proposed animal rescue shelter fits within the Zoning Ordinance definition of kennel. According to Section 154.048,(E),(3),(i), kennels are only allowed as a special use within the C-2, General Commercial District. Kennels are not listed as being allowed within the R-2, Single-Family Residential District (see Section 154.048,(A)). Kennels are also expressly prohibited as a home occupation (see Section 154.064). Because kennels are not allowed within the R-2 District, the applicant is requesting a use variance from the Zoning Board of Appeals.

The applicant is requesting a use variance from Section 154.048 (Purposes and Uses within Zoning Districts) to allow a kennel on property that is zoned R-2, Single Family Residential District. In accordance with Section 604 of the Zoning Enabling Act (PA 110 of 2006), the standard to apply in the case of a use variance is an "unnecessary hardship." This is a higher legal standard than what needs to be demonstrated for a dimensional (non-use) variance. To obtain a use variance, the applicant must show unnecessary hardship by demonstrating: The property owner demonstrates that the property cannot yield a reasonable return; the need for the variance is due to a situation that is unique to the property and would not generally, be found elsewhere in the same zoning district; the property owner must show the zoning ordinance gives rise to hardship amounting to confiscation or the disadvantage must be so great as to deprive the owner of all reasonable use of the property; the hardship is not self-created.

Section 154.218,(E) requires the Zoning Board of Appeals to additionally consider the following standards: a. That the ordinance restrictions unreasonably prevent the owner from using the property for a permitted purpose; b. That the variance would do substantial justice to the applicant as well as to other property owners in the district, and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be more consistent with justice to other property owners; c. That the plight of the landowner is due to the unique circumstances of the property; and d. That the alleged hardship has not been created by any person presently having an interest in the property.

Larner and Ward discussed how long a dog may potentially spend at the rescue. Larner clarified no breeding takes place, nor boarding. McComb clarified the variance runs with the property and not the owner; and further discussed the ordinance's definition for a kennel with Young. Cusson and the applicant discussed application process for a dog's admittance into her rescue; adoption process; maximum number of dogs. Young clarified provision of the ordinance for personal pets and that it differs from the kennel-definition.

Young reviewed standards for evaluation, briefly reviewed the rezoning process and the possibility of amending the zoning ordinance to define animal rescue rather than kennel. Kinyon commented on the Planning Commission looking at boarding kennels-language in the past and have the Planning Commission re-visit.

Young clarified voting options for Cusson, which pertains to members with dual membership. Discussion regarding the motion. Ward requested clarification regarding what an "aye" and "nay" vote would mean.

Motion by Kinyon, second by McDaniel to deny a variance a use variance from Section 154.048 to allow a kennel on property that is zoned R-2, Single Family Residential District. This denial is based on their inability to meet any of the criteria from Section 154.218,(E),(2), standards a-d. Roll call. Motion carried 3-1, with 1 abstention.

AYES: Kinyon, McComb, McDaniel

NAYS: Ward

ABSENT: Ciesielski

ABSTENTIONS: Cusson

Discussion between Young and Commissioners regarding a second motion to forward to the Planning Commission to consider.

Motion by Cusson, second by McComb to forward to the Planning Commission this process, and to look into possibly changing the definition to look into standards of animal rescue and clarifying the definitions between rescue and kennel, as well as non-profit and for-profit. Roll call. Motion carried 5-0.

AYES: McDaniel, Kinyon, McComb, Ward, Cusson

NAYS: None

ABSENT: Ciesielski

COMMISSIONER/COMMITTEE REPORTS

Young referenced the Master Plan Update materials enclosed for review by Board Members.

ADJOURNMENT

Motion by Ward, second by Kinyon to adjourn the meeting. Motion carried 5-0. The meeting was adjourned by Chairperson Ward at 8:17 p.m.

Respectfully Submitted,

Kristyn Kanyak, Deputy Clerk

Approved: _____