

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

**Tuesday, September 14, 2021**

**7:00 p.m.**

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**CALL TO ORDER**

The special meeting of the Linden Zoning Board of Appeals was called to order at 7:00 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:** Chris Kinyon, Dan McComb, Scott Ward, Esther McDaniel, Betty Ciesielski,  
Brad Dick

**ABSENT:** None

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

**MINUTES APPROVAL**

Motion by Kinyon, second by Ciesielski to approve the minutes of the October 13, 2020 Virtual Regular Zoning Board of Appeals Meeting. Motion carried 6-0.

Ward requested a revision to the Board's by-laws regarding the meeting time. Discussion regarding amending the by-laws. Further discussion between Board Members and City Staff regarding the process to add to tonight's agenda as New Business, item "C."

Motion by Kinyon, second by McDaniel to amend the by-laws. Motion carried 6-0.

**PUBLIC HEARING**

**(A) ZBA-02-21 235 E. Rolston Road – Road Frontage Variance to Allow a  
Proposed Lot Split**

Young reviewed the variance request and explained the purpose of the public hearing; addressing the forms of notices that were mailed and published for this request.

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

Andrew Gavulic, the applicant, was present and provided background and reasoning for the variance request. Gavulic provided details of the property and also explained his future plans for the property.

Amy Richards residing at 118 East Rolston Road, shared public comment.

Brief discussion between Amy Richards and the applicant, Andrew Gavulic. Young reminded all present of the public hearing protocol, requesting the public to direct questions to the Board, and asked the applicant to respond to the Board.

David Franz residing at 365 Silver Lake Road, shared public comment.

Paul Nickola residing at 245 East Rolston Road, shared public comment.

Jeremy Zinn residing at 265 East Rolston Road, shared public comment.

Eric Przybylowicz residing at 116 East Rolston Road, shared public comment.

Andrew Gavulic, the applicant residing at 235 East Rolston Road, shared comment.

Paul Nickola residing at 245 East Rolston Road, shared public comment once more.

Dick briefly commented on the scope of the Zoning Board of Appeals, and reminded all present on the topic being discussed this evening.

Ward closed the public hearing at 7:42 p.m.

### **CITIZEN'S COMMENTS**

Jeremy Zinn residing at 265 East Rolston Road, shared public comment.

### **COMMUNICATIONS**

None.

### **UNFINISHED BUSINESS**

None.

### **NEW BUSINESS**

#### **(A) ZBA-01-21 Election of Officers**

Ward briefly reviewed the officer positions as referenced within the by-laws.

Motion by Kinyon, second by McDaniel to nominate Scott Ward for Chairperson. Ward accepted the nomination. Motion carried 6-0.

Motion by Ciesielski, second by McDaniel to nominate Daniel McComb for Vice Chairperson. McComb accepted the nomination. Motion carried 6-0.

Motion by Ciesielski, second by Dick to nominate Christine Kinyon for Secretary. Kinyon accepted the nomination. Motion carried 6-0.

#### **(B) ZBA-02-21 235 E. Rolston Road – Road Frontage Variance to Allow a Proposed Lot Split**

Young reviewed his staff report: We are in receipt of an application submitted by property owner Andrew Gavulic requesting a variance from Section 154.047, (B), (2), (b) of the City of Linden Zoning Ordinance to allow a new lot to be created with no frontage on a public street.

The subject site, Property ID No. 61-17-551-107, is 2.82 acres in size and has 100 feet of frontage on East Rolston Road (refer to the enclosed map exhibit). The subject site is zoned R-1, Single-Family Residential District. Per Section 154.049 of the Zoning Ordinance, the R-1 District requires a minimum lot size of 15,000 square feet and a minimum lot width of 100 feet. Section 154.047, (B), (2), (b) also requires all new lots created to “have frontage on and direct access to a public street which has been accepted for maintenance by the city.”

An existing residential dwelling is located in the northern portion of the subject site. Although the

subject site has frontage on East Rolston Road, the property owner has an existing easement agreement in place with the adjacent property to the east for the shared use of that adjacent property's driveway connecting to East Rolston Road. As shown by a site sketch submitted by the applicant, the applicant is proposing to split the existing property into two separate properties. The proposed northern parcel (indicated as proposed Parcel B on the site sketch) would contain the existing dwelling. The southern parcel (proposed Parcel A) presumably would be made available for future development. Both proposed parcels would meet the minimum lot size and minimum lot width of the R-1 District. The proposed Parcel A would also have the required frontage on a public street. However, the proposed parcel B would not have frontage on any public street, and thus would not be in compliance with Section 154.047, (B), (2), (b). In order for the proposed property split to occur, the applicant would first need to secure a variance from the Zoning Board of Appeals.

Related to this variance request, we note the following findings of fact:

- The property is developed with a single-family residence and the property owner currently utilizes the driveway on the adjacent property to the east to access East Rolston Road. The use of this shared driveway is enabled by an ingress/egress easement.
- The subject site presently conforms to the lot frontage requirement of Section 154.047, (B), (2), (b). The need for this variance is being driven by the applicant's desire to split the property into two separate properties.
- Where the dwelling presently exists is at a higher elevation than the remainder of the property. According to topographic data, the house sits at an elevation of approximately 870-872 feet. From the house and extending south, the land slopes lower and the remainder of the property is situated at an elevation of approximately 860 feet (see map exhibit).
- Except for the northern portion of the property where the house currently sits, the majority of the remainder of the property is comprised of a wetland, according to information provided by the National Wetlands Inventory (NWI), U.S. Fish & Wildlife Service. This wetland is 5.2 acres in size and extends beyond the subject site (see map exhibit). Based on the NWI data, it appears that nearly the entirety of proposed Parcel A would be located within this wetland. The presence of this wetland is a significant constraint to the future development of the proposed Parcel A. A site-specific wetland delineation would likely need to be conducted by the owner and a permit from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) would likely be required before any development could occur. Given this, we are concerned that the proposed property split would result in the creation of a new lot (proposed Parcel A) that is unbuildable.
- Portions of the subject site and adjacent properties to the west are part of a natural drainage area. A county drain (Spring Meadows Branch of the Shiawassee River) is located on the property adjacent to the west and additional natural drainageways (as evidenced on aerial photography) appear to exist on both the subject site and properties to the west. If the proposed Parcel A is developed, which would likely require new fill and grade changes, we are concerned about the drainage impacts to the area.

In evaluating the request and the existence of a practical difficulty, the Zoning Board of Appeals shall consider the standards of Section 154.218, (E), (2) of the Zoning Ordinance. These standards are as follows:

- 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.

As the City's Planning Consultant, we have reviewed the project to determine whether a practical difficulty exists based on the standards of Section 154.218, (E), (2). It is our opinion that the request does not meet all of the standards of Section 154.218, (E), (2) and therefore has not met the practical difficulty test.

- Regarding standard (a) – The property owner is already utilizing the subject site for a permitted purpose – the use of a single-family residential dwelling.
- Regarding standard (b) – The property is a conforming lot and has the necessary road frontage on East Rolston Road. Allowing for a new lot to be created without road frontage could be seen as providing a special privilege to the property owner not afforded to other property owners.
- Regarding standard (d) – The need for this variance is being driven by the applicant's desire to split the property into two separate properties.

Kinyon and Young discussed the proposed parcel split and guidelines regarding types of nonconformities within the Zoning Ordinance. McComb questioned if past variances have been granted in the past, for similar requests. Discussion between Board Members and Gavulic regarding easement ownership. Gavulic expressed frustration regarding the discussion. Dick commented on the discussion that has occurred pertaining to the lot not being buildable, further explaining he agrees with the information provided within Young's Staff Report in regards to the wetlands and drainage concerns.

Andrew Gavulic, the applicant left the meeting at 8:07 p.m.

McDaniel questioned what address would be used for the second lot. Kinyon commented on the lot characteristics. Members discussed the buildability of the lot, in addition to the characteristics of the land.

Motion by Dick, second by Kinyon to deny the variance from Section 154.047, (B), (2), (b) to allow a new lot to be created with no frontage on a public street, for the following reasons as listed:

- (a) The property owner is already utilizing the subject lot for a permitted purpose, the use being a single-family dwelling;
- (b) The property is a conforming lot and has the necessary road frontage on East Rolston Road. Allowing for a new lot to be created without road frontage could be seen as providing a special privilege to the property owner not afforded to other property owners; and
- (d) The need for this variance is being driven by the applicant's desire to split the property into two separate parcels.

Further discussion regarding issues with the request, in regards to the easement. Young confirmed Board Members' understanding that this was a motion to deny, "yes" would mean you're supporting the denial. Roll call. Motion carried 6-0.

**AYES:** Kinyon, McComb, Ward, McDaniel, Ciesielski, Dick

**NAYS:** None.

**ABSENT:** None.

Kinyon requested the minutes reflect that the applicant left the meeting prior to the vote. Young explained he will provide a letter to the applicant with the decision.

**(C) Amending the By-laws**

Kanyak explained there are revised by-laws from 2009, that reflect the correct meeting time. Ward suggested holding all City Board meetings at one time.

**COMMISSIONER/COMMITTEE REPORTS**

None.

**ADJOURNMENT**

Motion by Ciesielski, second by Kinyon to adjourn the meeting. Motion carried 6-0. The meeting was adjourned by Chairperson Ward at 8:15 p.m.

Respectfully Submitted,

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Kristyn Kanyak, Deputy City Clerk

Approved: \_\_\_\_\_