

**CHARTER TOWNSHIP OF COMMERCE**  
**\*\*SPECIAL\*\* ZONING BOARD OF APPEALS MEETING**

*Thursday, February 16, 2017*  
2009 Township Drive  
Commerce Township, Michigan 48390

**CALL TO ORDER:** Rusty Rosman, Chairperson called the meeting to order at 5:30pm.

**ROLL CALL:** Present: Rusty Rosman, Chairperson  
Jorge Pacheco, Secretary  
Rick Sovel  
Bill McKeever  
Robert Mistele, Alternate ZBA Member  
Absent: Clarence Mills (excused)  
Also Present: Dave Campbell, Planning Director  
Jay James, Engineer/Building Official

Chairperson Rosman introduced the Members of the Board, as well as Dave Campbell and Jay James. She reviewed the requirements for receiving a either a dimensional and/or sign exception from the Zoning Board of Appeals, including the fact that all standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the Zoning Board Members. She also explained that if a petitioner's variance request is granted, they will receive a letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days from the date of the approval letter. If the variance is used, it runs with the land; however, if not used, it expires.

**APPROVAL OF MEETING AGENDA**

**MOTION** by Sovel, supported by Mistele, to approve the Zoning Board of Appeals Special Meeting Agenda for February 16, 2017, as presented.

**MOTION CARRIED UNANIMOUSLY**

**APPROVAL OF MEETING MINUTES**

None.

**UPDATE OF ACTIVITIES**

Rick Sovel - Township Board & Library

- We have a new Library.
- We had a special meeting on Tuesday. The Fire Chief retired and we have been looking for a replacement. We had 31 applicants and we are working to narrow it down to 5 candidates for interviews.
- The MDOT pedestrian bridge over M5 was approved and some budget items were reviewed.
- We also had a presentation from another assisted living facility that wants to come to Commerce.

Bill McKeever - Planning Commission

- Nothing to report.
- We've just had some housekeeping items.

**PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

None.

**ITEM I: PA17-0001 – JASON PLASENCIA – PUBLIC HEARING**

Jason Plasencia of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a single family home that will encroach into the lakeside front yard setback located at 1265 Vollmers. Sidwell No.: 17-15-302-065

**Chairperson Rosman opened the public hearing.**

The petitioner, Jason Plasencia, 1265 Vollmers, Commerce Township, was present along with his attorney, Jeff Lieb, 30445 Northwestern Hwy, #230, Farmington Hills, to address the variance request.

Jeff Lieb - Good evening, it's a pleasure to be here before your Board. I'm here on behalf of Jason and Amanda Plasencia, and their two children. Their property consists of Lots 121 and 122 of Commerce Lake Estates subdivision.

As you know, they are here seeking a 3' variance from the lakeside setback from 50' to 47'. The surveying work shows that the property is actually 12,149 square feet, but it extends beyond the seawall. The actual upland area is 10,894 square feet. A practical difficulty exists in this case relating to the land itself. I know that's one of the criteria. There's an irregular shoreline. If the shoreline were not concaved in shape, the 15' setback would not be an issue. For all the practical purposes, a 3' variance is only needed just for the eastern 19.54' portion of the home. Otherwise the setback is pretty well met.

I know in the packet you received a letter from Jason going through his scenario for getting his septic permit from the County. You've got a letter from me as well, and it's incorporated in Dave Campbell's staff report.

The Plasencia's received a septic permit from the Oakland County Health Department in the Sanitary Code Appeal Board that would permit them to install a small portion of their septic field in the Vollmers private road easement. There are numerous structures or encroachments that are already in that easement, including septic fields, sheds, garages, but they're all older.

I understand from Dave Campbell, and Hans Rentrop, that they have provided information to the ZBA that the Board does not have jurisdiction to allow a septic field in the road easement, even though it's a private road easement and it certainly would not be a precedent because there's already others, therefore we have withdrawn that component of our request.

In order to place the entire septic field within Lots 121 and 122, the Plasencia's and their architect needed to redesign the footprint by nudging it a little bit toward the lake by 3'. The cottage on Lot 122 will be demolished. It's already been vacated. The Plasencias are already renting another home with baited breath, hoping to be able to get started on this building project. Lots 121 and 122 will be combined into one building site.

The new home is proposed to have 3 bedrooms, and the grant of a 3' variance is the smallest variance that will enable the Plasencia's to be on legal footing with their other neighbors. The plans comply with every other dimensional requirement of the Township's Zoning Ordinance.

Every single neighbor, not only within 300', but all their neighbors in the same peninsula have submitted letters of support requesting you to grant their variance. As a matter of fact, there are 7 letters ...

Chairperson Rosman - I have those and I'll read that into the record.

Jeff Lieb - Okay, some of them are here tonight to urge their support to you in person. They got unanimous support in the neighborhood.

The plans were designed by their architect before getting their septic approval from Oakland County. All of their construction financing plans are in place. They're locked in concrete right now and everything will go down if they have to redesign the home itself. Everything was factored in for that particular site. Altering the plans would cause a very substantial hardship on the Plasencias. They love this area, they love Commerce Township, their neighborhood and their neighbors. They're looking forward to building their dream home to live in and raise their children.

With the approval of all the neighbors, it should be clear that there is no negative impact on public health, safety and welfare, nor will their home as proposed cause any material injury to any property or improvements in the neighborhood. The public welfare will be benefitted in fact by the addition of their new home, the tax base to the Township will be enhanced and neighbors have all expressed their welcoming on the combining of the two lots into one building site. This will be consistent with the redevelopment of the area.

The need for this variance is not self-created. It is more a factor of the irregular shoreline than anything else. Because of the meandering nature of the shoreline, and the irregular shape of the lot on the site, a strict compliance with the 50' setback will deprive the Plasencia's of rights enjoyed by their neighbors. I'm trying to cover the criteria of the Ordinance. Because the construction financing packaging for their home is set in stone, denial will cause a great hardship and burden on my clients.

As I indicated, they're renting a home and are ready to hit the ground, demolish the home and commence construction. Time is absolutely of the essence. I flew up from Florida today to be here tonight. I know there was another hardship. This was supposed to have been on the agenda a couple weeks ago and because of a publication error by the Oakland Press, it had to come tonight.

The grant of this 3' easement will provide substantial justice not only to the Plasencia's but to the neighboring property owners. The need is due to a unique circumstance peculiar to this land. It's not applicable to other homes in the area. It's a very modest request.

Oakland County Health Department issued a septic system which included a portion of the road easement and that's not permitted; but it delayed them 6 or 8 months. We're really anxious to move forward and we've now been able to fit the entire septic system onto Lots 121 and 122. About the only way to do that was to bump the house up 3'. This is a unique case, not only because of the land, but the hardships created over the screw-ups and jurisdiction issues.

By the way, Jason told me that before he even bought the property, he talked to Jay James who indicated that the issue of a septic system was not a Township issue - it had to be with the County. We went through all of those gymnastics first and got approval from the County. Then came back and found out that the Township wouldn't accept that. For a variety of reasons, there are hardships involved, besides the practical difficulty.

Chairperson Rosman - Thank you very much. Jason, is there anything you would like to add this evening?

Jason Plasencia - I wrote a fairly lengthy letter.

Chairperson Rosman - Yes, we all got it.

Jason Plasencia - I will add that the publication error delayed our meeting. I'm supposed to be on vacation with my family in Florida but I had to cancel to be here tonight.

Chairperson Rosman - Is there anyone here from the public who would like to address this issue this evening?

Chris Burrows, 995 Vollmers - I'm the subdivision president, so I came on behalf of the people of the sub. They can only really enhance the value of the neighborhood. Before Jason bought the house, it was a raccoon infested lot with a building that was falling apart. It's only going to make all of our houses better. I don't think it's a detriment to the sight lines of the other neighbors. One is here tonight. I want to add support. I'm on the same road.

Leo Gruzaz, 3550 Wortman St. - I'm not a direct neighbor, I'm a previous vice president of our subdivision. We've had situations like this in the past that have been reviewed and approved. This will obviously be a beautification to our subdivision, increasing our home values. The requested variance is minor and we are hoping that variance will be approved.

Mike Walker, 1233 Vollmers - I'm two houses away. I would plead with you to please let him slide on that 3'. I'm eager to see that house get improved and the neighborhood beautified. That might motivate my wife to let me beautify ours.

Richard June, 1273 Vollmers - I'm on Lot 123 right next door. I'm here for support for Jason. There were tree issues - I lost a big tree in my yard with the development of this property and I'm all for any help he can have.

**There were -5- returns and -6- letters.**

Chairperson Rosman stated that the letters were all the same, but she would provide the names from each and read the letter into the record as follows:

1. Gary Leeber, 1227 Vollmers
2. Carol Juzylo, 1301 Vollmers
3. Carol Juzylo, 1281 Vollmers
4. Michael Walker, 1233 Vollmers
5. Gary Cross, 1241 Vollmers
6. Richard June, 1273 Vollmers

*To the Zoning Board of Appeals regarding the ZBA application at 1265 Vollmers.*

*Dear Board,*

*We are neighbors of 1265 Vollmer Street and reside at (the above addresses), and are familiar with the proposed home that Jason and Amanda Plasencia would like to build*

*on their property, following the demolition of their existing, nonconforming home. We have reviewed the Plasencia's ZBA application for variances and have had an opportunity to see and review their proposed plans. We believe that the Plasencia's plans, created by D.J.W and Associates, are not only aesthetically pleasing to them, but also to us and the entire neighborhood. We have seen the proposed footprint and understand the issues involved, and that the standards need to be applied, and we respectfully urge you to grant the Plasencia's the requested 3' variance on the lakeside of the property, located at 1265 Vollmers Street, in order to accommodate their new home. Having a new home in the neighborhood is beneficial for the neighborhood as a whole, and combining the two lots, 121 and 122, into one building site, ensures that there will only be one home there and not two, even if there was sanitary sewer.*

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Sovel - We can't consider financial issues; whether it costs more or less, we can't consider that.

One of the questions is, *Does he have an option to make it work without the variance?* The answer actually is yes. Whether the house is built at the 47' or 50' setback, it will still improve the area.

Jason, it sounds like you had these plans designed, but you did not have the knowledge yet that you couldn't put the septic where you wanted it to go?

Jason Plasencia - When I started this process, I sat down with Jay and went over it, even before I bought the property. I asked him, do you think I can build a house here? What are the challenges? Things like that, and one of the obvious challenges was a septic system. I had the benefit of there being a house there already with a functioning septic system, granted it was about 30 years old, but I had a structure and a septic. I took the risk and said I'll go before the Oakland County Health Board and I had to go through the regular channels first where I applied and got denied. I already knew that was going to happen. I had the County Civil Engineer on site. Then we go to the board piece of this, trying to get them to approve me a system. Part of that was space. We had already designed the house and the system when we went to them. I had to do all of that in order to go to that board to get the system approved. I had to go to them two times and part of that was potentially using some of the road easement. There's a massive road easement as you can see from the drawings where the neighbor's retaining wall is; from there to where the asphalt curb is, it's all grass. In my photo, there's one shed that's completely inside of that road easement already. That house has some of their septic in the road easement. A house further down has a garage in the easement.

I started with the County, went to the RCOC and said how could I get permission to be able to use this area? They said your section of Vollmers is private. They said you need to get 51% of the lot owners in order to get permission. I made a petition and got 11 out of 13 people, and the other 2 were writing a letter. I took that back to the Health Department to the board meeting and they issued me the permit to use some of that road easement to get the septic system and the proposed house plan we already had. No need of a variance at that point.

Sovel - The house plan, was this pre-built home or custom-built?

Jason Plasencia - We had to do the plans in order to go to that meeting. I guess the plans are custom-built. I had to hire an architect.

Sovel - I'm trying to determine if you had a preset plan that you were trying to fit into this piece of property.

Jason Plasencia - No. So at that point, as far as I was concerned everything was fine. We got the permit from the County like I thought I was supposed to get. We went through the rest of the process of finishing the plans, securing financing from the bank. The bank took the plans, did an appraisal and we got financing.

Chairperson Rosman - We read all of that. Your difficulty is that you ran into the fact that you could not use the road.

Jason Plasencia - The difficulty, yes, basically the County issued me a permit and said build this here. Then when I went to submit my building plans, they said no, you can't do that. But the County told me to do it, and a special board, like this board I'm at now, told me this is what you have to do. This is what I was given permission to do.

Sovel - Jay, do we have municipal water or sewer on the street?

Jay James - No, we do not.

Sovel - If it were to come down the street, what impact would it have with where the septic are?

Jay James - You can't tell right now. I would guess it would be minimal, but we oftentimes push the utilities out as close as we can to the right-of-way lines. This road is not the normal width of a standard road. Typically we would put the utilities out near the right-of-way line. We have to have 10' from the right-of-way lines, and they usually tear up the 10' while installing lines.

Sovel - Is there a chance that if the septic was located there, that it could damage the septic during construction?

Jay James - There's a chance. I couldn't tell you for sure. Obviously if we knew the septic was there, we would try not to, but there's a chance it could be in the way.

Sovel - If sewer were to be coming through there, how long would it take them to be able to hook up? Within a couple months?

Jay James - Yes, if they brought it down through there, he would be connected as soon as the sewer was active.

Rosman - Is there sewer available in that sub?

Jay James - There's no sewer. The closest is almost all the way down to South Commerce Road.

Mistele - I know you said your lot was different, but in looking at Lot 123, I can see a significant squared off cut-in, for a boat well. I don't know that your lot is necessarily unique in that aspect. That is my concern.

Pacheco - I don't understand completely what the problem is. I'm not completely satisfied that I have all the details. If the County approves the septic field in front of the house, why couldn't they build it if they have jurisdiction over doing that?

Jay James - The Health Department does not have jurisdiction over that road. In my opinion, they have no right to approve a septic field in the road. The road is actually owned by the owners of that plat. They all have an interest in that section of private road. Jorge, it would be no different than your neighbor getting approval from the Health Department to put their septic on your property. They have no right to allow that because that's your property. Unless you gave your approval for that, it couldn't be done.

In this case, they approved something in a private road without the approval of all the people that have an interest in that road. Jason did come in and talk to me before he got started and he tried to do everything in the correct way. I did tell him he needs to go to the Health Department because they're the ones that permit septic fields. I've called the Health Department concerning this matter, asking them how are they approving items not on that property. The Health Department claims they denied it, and it was the Board of Appeals that approved it. They have no control of that.

I don't know why that happened, but I'm going to talk to the Health Department more about it because this is something they should not be allowing. They're approving an improvement on a piece of property that is under someone else's ownership without the approval of the owners.

Rosman - Thank you.

Pacheco and Jay James continued discussing and reiterating how the septic could not be placed in the easement. Although the surrounding neighbors and the HOA seemed to be in favor of the proposal, Mr. Plasencia needed the permission of every single homeowner in the entire platted sub in order to put the septic into the private road easement, and he did not obtain that. Rosman clarified that this had been reviewed by the Township Attorney and he confirmed these facts.

Pacheco - It is possible to meet the Ordinance here if the house plans are adjusted. It's a beautiful house, but I'm supposed to support the Ordinance of Commerce Township. I feel you could modify the house a little bit and fit it on the site without requiring a variance.

McKeever - Jorge was coming to this conclusion. The fact is that the house was designed in a way that didn't fit the building envelope. In my opinion, it's a self-created issue. Your design professional should have known the parameters in which the house could be designed. He came up with a design that didn't fit within that envelope. You've gone to great pains in pointing out all the existing structures within the

easement, which I'm going to venture to say were not granted easements or variances by Commerce Township because we don't have the legal authority to do that. There is a way that this house could be designed to fit within the building envelope. The fact is that your design professional has put you in a time crunch, by coming up with a design that doesn't fit, and you're trying to make that problem our problem. That doesn't fit the criteria for granting a variance.

Rosman - My concern has to do with the upper story of your house.

Jay James - I've already talked to them about the bedroom upstairs.

Rosman - I want to put my concern on record - your plan is showing 3 bedrooms and a study. The study has a closet, and in the sleeping area, the County counts bedrooms by closets. In essence, I count 4 bedrooms and so does everybody else. This is not a 3-bedroom house, which is what you're going for.

My other concern, because we see this all the time, is where people build it with a closet and drywall over it. After they move in, they take that drywall out and then they have a closet. I count that as a 4th bedroom and this house is too big for the septic that has been designed for this lot. I agree 100% with Bill that the house needs to be downsized by X number of feet to fit and get that septic within your 50' setback. Because there is not sewer in your subdivision, I can't in all consciousness, approve this. I would much rather see you cut it back.

I have all the sympathy in the world and I know all about loans and crunches. You have done everything right, and you've been caught in a Catch 22 not of your own making totally, but your architect did not do right by you.

Sovel - If 100% of the residents had approved and signed, would you have approved this?

Jay James - Yes.

McKeever - It wouldn't have even come to this.

Jay James - It would have been approved.

Sovel - What happened with the other two?

Jason Plasencia - No, he wants 100% of every single person in the sub, all 100+.

Sovel - It's not just the 11?

Jay James - It's everyone in the platted subdivision that owns an interest in that section of the road.

Dave Campbell - I know there's a lot of conversation about the septic and where it can or can't be located. I recognize that's a big part of this, but for the sake of clarity, I wanted to make sure that it's understood by the Zoning Board of Appeals that it's not up to you whether or not they can put that septic in the road easement. The decision before you tonight is whether or not the house can be 3' closer to the edge of the lake

than the minimum that's required by the Zoning Ordinance. I encourage you not to try to craft any kind of motion relative to the location of the septic field because that's not the decision that's yours to make at this point.

Jay James - I feel for Jason. He has tried to do everything right and I do think that he was unfortunately led astray by the Health Department. If there was something else we could come up with, I would love to figure it out. I've tried.

Rosman - I know you guys have tried and I know you've given it everything you've got.

Jeff Lieb - I would like to add one thing. I wanted to clarify that the architect was not at fault. The change didn't happen after the ... The footprint of the home was designed with the Health Department in mind to place the septic system in the easement. The footprint didn't change.

McKeever - But you stated that the house was designed before the approval of the septic field.

Jeff Lieb - Contemporaneously with the septic field. Then all the financing was done and we didn't change the architecture of the house.

McKeever - Before even putting pencil to paper, you should have known what the building envelope was.

Jeff Lieb - They did and we conformed to that.

McKeever - No they didn't ...

Rosman - Mr. Lieb, you conformed to it assuming you could either go 3' closer to the lake, or 3' into the easement.

Jason Plasencia - No, I got permission from the County to put that septic field partially into the easement, from that governing board I got permission.

Jeff Lieb - The footprint that was designed met every Ordinance requirement.

Rosman - Mr. Lieb, again, the Health Department doesn't have the right to let someone go into the easement. While you got it, they didn't have the right to do it. We have gone through our lawyers. I know Dave has spent so much time on this. It's in our notes what they talked about. They researched it ...

Jeff Lieb - I don't disagree with that.

Rosman - I need to stop you. This is tough for you and for us. Don't think this is easy, because it's not.

**MOTION** by Rosman, seconded by Mistele, with regret, to deny Item PA17-0001, the request by Jason Plasencia of Commerce MI for a variance from Article 6 of the

Commerce Township Zoning Ordinance to construct a single family home that will encroach into the lakeside front yard setback located at 1265 Vollmers.

Sidwell No.: 17-15-302-065

Based on the presentation and the comments we have heard, I believe that the applicant has not met all the criteria of Section 41.09 of the Township's Zoning Ordinance for granting a dimensional variance. Therefore, I make a motion to deny the request for a variance from Section 41.09 because:

1. The property can be used in a manner that others in the zoning district can use their property without the proposed variance.
2. There is no unique feature of the applicant's land that doesn't apply to the other land in the zoning district, such as a meandering front lakeside lot line.
3. The problem is self-created by the applicants, or their predecessors.
4. The practical difficulty and hardship sought to be cured is merely an inconvenience or the desire for a higher financial return.

Discussion -

Sovel - Can the votes be with regret?

Rosman - Yes, we can all do it with regret.

Pacheco - It's a shame it wasn't done differently.

Rosman - There's no question that Jason, Mr. Lieb, Dave and Jay have spent hours discussing this, along with the Township Attorney.

**ROLL CALL VOTE - (All denied with regret)**

**AYES:** Rosman, Mistele, McKeever, Sovel, Pacheco

**NAYS:** None

**ABSENT:** Mills

**MOTION CARRIED UNANIMOUSLY**

Jeff Lieb - Can I just clarify one thing? I know it is over with, but I didn't want you to think that the footprint changed.

Chairperson Rosman - We understand that.

Jeff Lieb - It was originally designed to meet every ordinance requirement and it met the setbacks.

McKeever - If it met the setbacks you would not need a variance.

Jeff Lieb - The only reason we needed a variance was because the County wouldn't ... The Township wouldn't allow ...

McKeever - Just because the County messes up does not change the fact that we don't have the authority to grant one.

Jeff Lieb - The plans as originally designed met the setback.

McKeever - I disagree.

**MOTION** by Sovel, seconded by Pacheco, to remove Item PA16-0009 from the table.

**MOTION CARRIED UNANIMOUSLY**

**ITEM II: PA16-0009 – ARANEA INC – TABLED FROM 1-26-17**

Araneae Inc. of Wixom MI representing Vernon Avenue Properties (Tutor Time) is requesting an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a monument sign that will encroach into the required front yard setback located at 8011 Commerce Road. Sidwell No.: 17-12-428-002

**Chairperson Rosman opened the public hearing.**

Nancy Sears, District Manager for Learning Care Group, was present to represent the petitioner, Tutor Time, located at 8011 Commerce Road.

Rosman - We had tabled your request and your company was to talk with the Planning Department.

Nancy Sears - The reason why we are requesting the variance is that many people in the community do not know we are there and they can't find us because the sign is not visible. A large percentage of our business in enrollment comes from drive-bys. Even on my first trip to the school, I missed it, and a lot of our clients say they missed it because the sign is totally not visible. We have several people that say, once they have found us, that they never knew we were there. We are asking just to place the sign, still within the landscaped area, but moved the other way to increase the visibility.

**There were -3- returns and -0- letters.**

**Chairperson Rosman closed the public hearing.**

**Board Comments:**

Rosman - You did a great job staking this out.

McKeever - My problem is with the fact that the existing landscaping is screening the sign, and the sign is parallel to the road. Maybe they could get a V-shaped sign. I don't know that it qualifies for a variance based on the fact that by maintaining the landscaping, the sign would be more visible. If the reasons that you're asking for a variance qualified this to be approved, then I would say that there is an issue with the Ordinance and that should be adjusted. It doesn't make sense to me to move this sign closer to the street, when just maintaining the existing landscaping and coming up with a better sign design would improve the visibility.

Sovel - My biggest issue is the landscaping. What can be cut back, and what can't? What landscaping options are there, whether they turned the sign or not?

Dave Campbell - There are some mature spruce trees and some deciduous, mostly on the east side of the site and sign. They were planted when Tutor Time opened in the early to mid-90s and they've certainly grown out since then. There seem to be opportunities to prune the trees up and back. That might be an opportunity to expose the existing sign a little bit better. The existing sign is a conforming sign. While we always hate to see trees come down, as we discussed at the January meeting, those trees are not part of an approved landscape plan. It would be within the property owner's right to remove those trees if they felt it would give better exposure to

the existing site. They would be within their rights to pivot the sign 90 degrees so that it's perpendicular to the road, which also probably would improve the visibility.

Sovel - Can they turn the sign without a need for a variance?

Dave Campbell - As long as they kept it the current distance from the road, which is the 75' minimum.

Sovel - What if they used the triangular type of sign?

Dave Campbell - I would defer to Jay on that for the standards relative to signs that aren't straight-faced.

Jay James - It is allowed in the Ordinance. There's a certain degree they have to be and can't exceed, but yes, it can be a V-shaped sign if it meets that certain angular dimension. I want to say 30 degrees, but I'm not positive.

Sovel - Did you meet with staff?

Dave Campbell - I never met with anybody face-to-face and I can't say whether or not Jay did. It sounds like he did not. I did have a conversation with Paul (Koz), and I'm unsure where Paul fits into the hierarchy. I did spend quite a bit of time on the phone with him. I will point out, as was noted in my letter, that they did pull the sign back from what was proposed when they came before you January 26th. They were looking for a sign that was 22.5' off the road, and now they've pushed it back 9.1'. They are looking to lessen the degree of the exception they're asking for, but they still are not meeting the 75' minimum.

Sovel - Did they do that on their own, or did they do that working with you?

Dave Campbell - They did that on their own and then called and said, here's what we're looking to do. We want a lesser exception. I know when I spoke with Paul, part of his rationale for still needing an exception was that there's also landscaping on adjacent property that is out of their control. One of his contentions was that the landscaping on the existing neighboring property also blocks their sign and it's not within their right to trim up someone else's landscaping.

Sovel - I thought we tabled it so that they could actually work with you guys to come up with a solution, but we can't force them to do that. If it was moved closer to the road, what would happen with the landscaping?

Dave Campbell - They're showing the new sign would be moved closer to the road, but it still would be within their existing landscape bed.

Rosman - Same problems with the trees blocking it because he's got it parallel to the road.

Dave Campbell - In addition to asking to put a new sign closer to the road, they also want to turn the sign perpendicular to the road. Turning it perpendicular is not the issue. It's the distance of the closest part of the sign to the centerline of the road.

Pacheco - It's another one that's really rough for me. I would pass for now.

Mistele - I struggle with taking a conforming sign and making it nonconforming. Turning the sign would increase the visibility quite a bit and possibly a 2-sided sign option would be good for the site. I don't see extensive tree removal being an issue as there's only a couple trees there that would need to come down.

Rosman - I too have a terrible time taking something that is conforming and making it nonconforming. As with the appeal before you, we have something that conforms right now, and you're asking us to go against the Zoning Ordinance. Our job is to maintain the Zoning Ordinance with the least degree of a variance as possible. You already conform so I'm not going to be able to do that. I do want to speak to the trees. Bill, you're absolutely right that the landscaping needs to be addressed.

McKeever - Not necessarily removing the trees, but trim them up so that people can see into the site. A good portion of the building is not visible and you need to open the site up.

Rosman - There are options there. Dave is there anything you'd like to add?

Dave Campbell - Not at this time, unless someone has a specific question. I think between the first time we saw this back in January and then tonight, we've covered the issues fairly comprehensively.

**MOTION** by Rosman, seconded by Sovel, to deny Item PA16-0009, the request by Araneae Inc. of Wixom MI representing Vernon Avenue Properties (Tutor Time) for an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a monument sign that will encroach into the required front yard setback located at 8011 Commerce Road. Sidwell No.: 17-12-428-002

Based on the presentation and comments that we have heard, I believe the applicant, Araneae Inc., has not satisfied the standards of Section 30.09 of the Township Zoning Ordinance for granting an exception to the required front yard setback for a freestanding sign along Commerce Road, and therefore I make a motion to deny the request for an exception of 13.4 feet relative to the front setback requirement of Section 30.03.F of the Zoning Ordinance.

**ROLL CALL VOTE**

**AYES:** Rosman, Sovel, McKeever, Mistele, Pacheco (*with regret*)

**NAYS:** None

**ABSENT:** Mills

**MOTION CARRIED UNANIMOUSLY**

**ITEM 3: OTHER MATTERS TO COME BEFORE THE BOARD**

- Rosman initiated discussions regarding procedures and protocol for reviewing ZBA agenda items and working with staff on any questions that may arise. She also noted that tabling an item only serves to ask staff to work with the

petitioner's a second time on the request, when they have already done so previously.

- Sovel discussed staff working with the petitioners to reduce footprints and eliminate the need for a variance. Jay James replied that he does explain the criteria repeatedly, as does Dave Campbell.
- Sovel stated that the Township Board approved revised wording for the Zoning Board of Appeals Article 41.

Dave Campbell discussed the amendment and the six criteria that the ZBA reviews when considering a variance. The amendment recently adopted by the Township Board was a housekeeping item and was intended to ensure that the Zoning Ordinance is consistent with the language of the Michigan Zoning Enabling Act. The provisions were further discussed with regard to voting rules, recusals, absences, the alternate member, and voting by ZBA members who also sit on the Planning Commission or Township Board. Sovel clarified that when there is a conflict of interest, a member may not discuss an item or vote on it; however, if they are unable to vote on the ZBA only because of the fact that they already took action on the item at a previous meeting, they are still permitted to discuss the item with the Board in that case. The prior action does not prohibit them from discussing what took place at the previous meeting; it only prevents them from voting again on the same item. He had requested that the attorney put an opinion in writing regarding whether or not a member can choose which board they will vote at on a particular item, as he feels the Township Board is a higher charge than voting at the ZBA.

#### **ITEM 4: PLANNING DIRECTOR'S REPORT**

- The Planning Commission recommended the Article 41 amendment, and the Township Board adopted it. That will go into effect within 10 to 14 days.
- Concurrently, ZBA bylaws are being updated and should be back before you in March. These will be reviewed and reaffirmed on an annual basis.
- The Planning Commission had a review of a Conditional Rezoning request for a proposed gas station at the southwest corner of Newton and Commerce Road. They made a formal recommendation to the Township Board, with a 5-0 vote, to deny that Conditional Rezoning.
- Clark had their Conditional Rezoning approved by the Township Board and they will return to the Planning Commission for site plan and Special Land Use.

Open discussions continued regarding potential developments in the DDA, agenda items for the March meeting, and signage matters at several sites.

**NEXT REGULAR MEETING DATE: THURSDAY, MARCH 23, 2016**

#### **ITEM 5: ADJOURNMENT**

**MOTION** by Mistele, supported by McKeever, to adjourn the meeting at 6:52pm.

**MOTION CARRIED UNANIMOUSLY**

---

**Jorge Pacheco, Secretary**