

Draft

Casco Township Zoning Board of Appeals

September 21, 2023

7:00 PM

Casco Township Hall

Present: Chairman Matt **Hamlin**, Vice Chair Paul **Macyauski**, Alex **Overhiser**, Dian **Liepe** and Matt **Super**

Absent: None

Also Present: Zoning Administrator Tasha **Smalley**, Recording Secretary Jennifer **Goodrich**, Andy **Litts**, Henry **Cisco**, Tim **Lubbers**, Lloyd and Jeanne **Lewis**, Shelynn (Shelly) **DeVries**, Victoria **Villwock**, Peggy **Spencer**.

- Call to Order:

The meeting was called to order by Chairman Matt **Hamlin** at 7:00 PM for the purpose of hearing variance requests by Henry **Cisco**, Lloyd and Jeanne **Lewis**, and Shelly **DeVries**

- Approval of Agenda:

A motion by **Hamlin**, supported by **Super** to approve the agenda as presented. All in favor. Motion passed.

- Public comment: None

- New Business:

- A. Henry **Cisco** of South Haven MI has petitioned for variances at v/l 68th St. 03-02-020-002-00 from Mineral Mine Ordinance 15.03DD.

Request #1 3e – all the operation shall be fenced (chain-link or wood) with fence no less than 6ft in height; request of 4 foot high wire fence.

Request # 2 31 – the mine access road shall be hard surfaced for a distance of 200 feet and a width of 24 feet; the request, for temporary relief, is for the mine access road to be gravel and not hard paved (68th St is a gravel road) until the road is paved.

Open Public Hearing – 7:05

Lubbers briefly recapped the approximately 14 Months of Planning Commission (PC) meetings that had lead up to **Cisco** receiving his Sand Mine Special Land Use (SLU) approval at last night's PC meeting. **Lubbers** brought up the fact that there is a split rail fence at the top of the Bluff at the Casco Township Nature Preserve, to presumably protect people from fall or injury. **Lubbers** questioned why that was sufficient to protect people but a 6' tall chain-link fence would be required to protect people from trespassing onto the sand mine property and injuring themselves. **Lubbers** also explained that until 68th St is paved it seemed pointless to pave the 200' at the entrance to the sand mine.

Super asked **Lubbers** why they were already trying to change the conditions of approval, which they had just agreed to the night before. **Lubbers** responded that this had always been their intent and that they had been directed, throughout this process, to ask for the variances after the SLU had been approved. **Lubbers** explained that a 4' wire fence would be cheaper and that there would still be clearly marked no trespassing signs; stating that most of the other sand mines he operates do not even require fencing.

- Correspondence: None
- Audience for / against:

Andy **Litts**, PC chair, stated that when the applicant came to the Township for the SLU approval the conditions of that approval, to comply with the Zoning Ordinance, were clearly understood.

- Any further discussion: None

Close public hearing at 7:06 PM.

Hamlin remarked that the request narrative only discussed the height of the fence and not the type. **Hamlin** does not think a 4' high wire fence would be enough of a deterrent to trespassers. **Hamlin** also questioned if the June 7th Site Plan that was approved by the PC showed the fence encompassing the entire property or only the Phase(s) currently being excavated and/or in the reclamation process. **Litts** responded that the project statement stated that there would be public safety berming in the 200' buffer along 68th St and that a 6' fence would be relocated as the mining progressed. **Smalley** agreed that the approved plan did not show the fencing going around the entire property.

Macyauski remarked that **Lubbers** determination that a 4' wire fence would be a sufficient deterrent to trespass was solely based on his opinion and that no factual evidence had been provided. **Lubbers** responded that a discussion had just been had at the most recent Twp. Board meeting regarding the safety of the split rail fence at the nature preserve. **Macyauski** responded that there was no Zoning Ordinance requirement for that fence to protect the citizens; where this SLU does require it. **Lubbers** responded that the Sand Mine is Private Property and No Trespassing signs should be enough. **Hamlin** shared some anecdotal evidence from his childhood where a friend of his broke both of his arms in a dirt bike accident at a family owned private sand mine, because the topography of the area had changed since the last time he had ridden the area.

Macyauski reminded the applicants that they had agreed to abide by all of the rules of the SLU. **Lubbers** reiterated that this was the protocol he had been given to follow; get the SLU first and then ask for the variances.

Macyauski asked the ZBA members if they had any other questions. **Liepe** asked what the wire fence would look like; size of the mesh and gauge of the wire. **Macyauski** responded that it would look like the fences you see around the orchards in the area. **Lubbers** responded that it would be 8 x 8 squares Highway Fence.

- Discussion / Decision of variance request:

Hamlin read through the standards taking comments from commissioners

1. Granting the variance will not be contrary to the public interest and will ensure that the spirit of the Ordinance is observed.

No. **Macyauski** stated that he had been around when this Ordinance was created and no one had contested that a 6' high was not necessary and/or that a 4' high fence would be sufficient.

2. The variance is being granted with a full understanding of the property history.

Yes. The property use has historically been agriculture.

3. Granting the variance will not cause a substantial detriment to property or improvements in the vicinity or in the district in which the subject property is located.

No. the attractive nuisance caused by the sand mine might cause injuries if it is not properly secured.

4. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practical or recurrent in nature.

Yes. the specific conditions pertaining to this property and application are unique to the SLU approval for removing and processing of sand. There are only a few similar sites in the township.

5. That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of property, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances include any of the following:

- Exceptional narrowness, shallowness, or shape of a specific property on the date of this ordinance.
- Exceptional topographical conditions.
- By reason of the use or development of the property immediately adjoining the property in question.
- Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.

No. There are no practical difficulties in the way of carrying out the strict letter of these regulations, other than cost and the time involved in relocating the fence in phases.

6. That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

No. The applicant still has the right to utilize the mineral deposits on his property, he just has to use a 6' high chain-link or wood fence and move it from phase to phase, as mining progresses.

7. That the variance is not necessitated as a result of any action or inaction of the applicant.

No. The SLU approval was requested by the applicant. Their request to receive a variance from the approved conditions is self-created.

8. The variance, if granted, would be the minimum departure necessary to afford relief.

No. Height, style and location variations are not the minimum that could have been requested

9. If involving a platted subdivision, that there is no practical possibility of obtaining more land and the proposed use cannot be located on the lot such that the minimum requirements are met. n/a

A motion was made by **Super** to deny the variance request for the fence height and location because the applicant did not meet the standards to grant variance request. Supported by **Overhiser**. Roll Call Vote. **Hamlin** –Yes, **Macyauski** – Yes, **Overhiser** – Yes, **Super** – Yes, **Liepe** – Yes. 5-0 Yes (to deny)

Hamlin stated that that a wire fence is easier to cut through than a chain-link fence and it would be easier to gain access to the site. **Super** wants the applicant to stick to the original approval. **Liepe** questioned what a wood fence would be defined as, could it be a split rail. **Hamlin** stated that a wood privacy fence could be appropriate for screening on 68th St.

Litts commented that chain-link is specific but stating that it will be a wire fence is a generalized statement. **Macyauski** suggested that if the applicants agreed to a 6' wire fence the ZBA could postpone a decision and let the applicants come back with complete specifications as to the type and make, with recommendations from the National Safety Council, so that they could make a decision to that effect at their next meeting.

A motion was made by **Super** to deny the variance request for the fence type because the applicant did not meet the standards to grant variance request. Supported by **Macyauski**. Roll Call Vote. **Hamlin** –Yes, **Macyauski** – Yes, **Overhiser** – Yes, **Super** – Yes, **Liepe** – No. 4-1 Yes (to deny)

Macyauski asked if the access road would have to meet the Private Road standards and if there was any reference to the Allegan County Road Commission (ACRC) Standards. **Smalley** responded that those standards do not apply to

an access drive at a sand mine. **Macyauski** asked if there are any standards that would apply. **Smalley** responded that the SLU did not have any such requirements.

Super stated that the SLU does have a condition that the first 200' needs to be paved. **Hamlin** explained that the intent is to minimize mud, dust, and debris from entering the roadway (68th St). **Super** stated there there would be a lot of traffic coming and going, including, employees, customers, and heavy equipment. **Hamlin** reminded the ZBA members that the ACRC would only be contracted to apply dust control to 68th St so many times a year, as scheduled, and not at special request; due to scheduling and budgeting restrictions.

Liepe asked if a timeline of completion could be established, to ensure that the applicants would pave the driveway entrance once 68th was paved. **Hamlin** stated that other sand mines in the area have paved approaches. **Cisco** replied that the one on 103rd was not paved. **Hamlin** responded that the 103rd Ave sand mine was grandfathered in before the current requirements had been adopted. **Litts** asked if the ZBA granted the temporary relief from the requirement what would be the guarantee that the applicants would follow through with the paving requirement; suggesting that the cost would not be going down, so they might as well do it now.

Smalley reminded the ZBA that if the applicants did not follow through they would lose their SLU. **Macyauski** asked who would be inspecting the site to ensure that they are following all of the conditions of their SLU approval. **Smalley** responded that she would be the one tasked to ensure compliance.

Macyauski asked when the SLU was approved. **Smalley** responded that the PC approved it at their 9-20-2023 meeting. **Macyauski** asked when the applicants would have to come back for their annual re-approval. **Smalley** replied that they would be on the agenda for the September 2024 PC meeting.

Macyauski asked **Lubbers** when they intended to start mining. **Lubbers** responded that it probably wouldn't be until Spring of 2024 since they still needed to put up the fence, gate, signage, etc. **Macyauski** remarked that anyone that has ever lived on a dirt road knows that dust control isn't effective.

Hamlin read through the standards taking comments from commissioners

1. Granting the variance will not be contrary to the public interest and will ensure that the spirit of the Ordinance is observed.

No. The intent of the condition is to cut down on the dust obstructing the view of drivers on the road and vehicles coming and going from the site.

2. The variance is being granted with a full understanding of the property history.

Yes. The property use has historically been agriculture.

3. Granting the variance will not cause a substantial detriment to property or improvements in the vicinity or in the district in which the subject property is located.

No. the added dust is a substantial detriment to traffic safety.

4. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practical or recurrent in nature.

No. the specific conditions pertaining to this property and application are that the subject property is located on a gravel roadway.

5. That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of property, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances include any of the following:

- Exceptional narrowness, shallowness, or shape of a specific property on the date of this ordinance.
- Exceptional topographical conditions.
- By reason of the use or development of the property immediately adjoining the property in question.
- Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.

Yes. the specific conditions pertaining to this property and application are that the subject property is located on a gravel roadway.

6. That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

No. The applicant still has the right to utilize the mineral deposits on his property, he just has to pave the first 200' of the driveway.

7. That the variance is not necessitated as a result of any action or inaction of the applicant.

No. The SLU approval was requested by the applicant. Their request to receive a variance from the approved conditions is self-created.

8. The variance, if granted, would be the minimum departure necessary to afford relief.

No, a hard surface access is required for traffic safety.

9. If involving a platted subdivision, that there is no practical possibility of obtaining more land and the proposed use cannot be located on the lot such that the minimum requirements are met. n/a

A motion was made by **Macyauski** to deny the variance request for the temporary relief from paving the first 200' of the sand mine access drive because the applicant did not meet the standards to grant variance request. Supported by **Super**. Roll Call Vote. **Hamlin** – Yes, **Macyauski** – Yes, **Overhiser** – Yes, **Super** – Yes, **Liepe** – No. 4-1 Yes (to deny)

Macyauski remarked that **Smalley** should not be submitting variance request applications without the applicants providing sufficient proof that their request is valid and appropriate.

- B. Lloyd & Jeanne **Lewis** of South Haven MI have petitioned for a variance at 1009 68th St, 03-02-004-021-00 to construct a garage addition to their existing home. The request is for 15 feet of relief from the front yard setback (35 feet from the Right of Way (ROW)); required is 50'.

Open Public Hearing: 7:55

The existing home is within the required front setback. The applicants wish to construct in the approximate same front line. The **Lewis**' would like to add an attached garage to the South side of the former Hadaway Schoolhouse. It would have a bonus room above and be connected to the house with a hallway on the main & basement level. The addition cannot be constructed to the North side due to the well and generator location and cannot connect on the East side due to an existing deck. The septic location also keeps them from moving it farther way from the road.

- Correspondence: None
- Audience for / against: None
- Any further discussion:

Hamlin remarked that the location makes sense in relation to the house and driveway. **Super** agreed. **Macyauski** commented that relocating that amount of infrastructure to locate the addition in a different location would be costly.

Close Public Hearing: 8:01

Hamlin commented that the addition would not be encroaching any further into the ROW, and that they could safely back out of the garage without backing into the road. Adding, that the addition would not be a detriment to the neighbors or general public safety and that Fire Department (FD) equipment would still be able to access the property. The thought being that it was logical that old buildings that were constructed before the Zoning Ordinance or other rules had been established should be allowed to receive these kinds of setback variances. It was determined that the request had met all of the standards of the Facts of Finding.

A motion was made by **Hamlin** to approve the **Lewis**' variance request for 15' of relief from the front yard setback requirements because the applicants meet the standards to grant variance request. Supported by **Super**. Roll Call Vote. **Hamlin** –Yes, **Macyauski** – Yes, **Overhiser** – Yes, **Super** – Yes, **Liepe** – Yes. 5-0 Yes (to approve)

- C. Shelly **DeVries** of South Haven MI has petitioned for a variance at 7350 Beachview Dr., 03-02-380-145-00 to construct a 3 season room addition to the existing home. The request is for 14 feet of relief from the front yard setback requirement (11 foot from the property line); required is 25'.

Open Public Hearing: 8:05

The property has three street fronts. Circle Place is an undeveloped ROW. The request for relief is from the undeveloped ROW's front yard setback. **DeVries** explained that her legal non-conforming lot already has a patio located where she would like to construct the addition. Her driveway comes off of Homewood even though she has a Beachview Dr. Address. Essentially this addition is located on the rear of her home, even though it is technically a street front, although undeveloped.

Macyauski asked if Homewood was a public road. **Smalley** stated that it is, with platted lots. **Hamlin** commented that Nederveld's survey was incorrect and that the garage and house orientation was not correct. **Hamlin** stated that the garage is squared to Homewood and the house should be slightly skewed towards the curved frontage on Beachview Dr. **Liepe** asked if the applicant could purchase more property to which **DeVries** responded no, that she abuts the road frontage on the two sides where the addition would go. **DeVries** commented that she has made numerous improvements to the property and its landscaping in the two years that she has owned the home, to the extent that her property was included in the garden club parade of homes

- Correspondence: None
- Audience for / against: None
- Any further discussion: None

Close Public Hearing: 8:09

It was determined that the request had met all of the standards of the Facts of Finding.

A motion was made by **Macyauski** to approve the variance request for 14' of relief from the front yard setback requirements because the applicants meet the standards to grant variance request. Supported by **Super**. Roll Call Vote. **Hamlin** –Yes, **Macyauski** – Yes, **Overhiser** – Yes, **Super** – Yes, **Liepe** – Yes. 5-0 Yes (to approve)

- Old Business: none
- Public comment:
- Approval of previous minutes – April 20th, 2023, **Hamlin** made a motion to approve the minutes as corrected, supported by **Super**. All in favor. Motion passed.
- Meeting adjourned at 8:10PM.

Attachments available at Casco Township Hall upon request

Minutes prepared by:

Jennifer Goodrich, Recording Secretary