

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS
BOARD MINUTES - APRIL 11, 2012**

1. **CALL TO ORDER/ROLL CALL:** Chair Martin called the regularly scheduled monthly public hearing to order at 7:00 P.M. within the County Board of Commissioners' meeting room located on the first floor of the Surbeck Building, 201 N. Shiawassee Street, in Corunna.
ROLL CALL: Present: Ann Gamboe Hall, Gerald Wardell, N. Brad Hissong, Willis Miller, Larry Gramer, and Henry W. Martin III.
Also present: Peter J. Preston/Director of Community Development, Linda Gene Cordier/Zoning Administrator, and Commissioner Ron Elder. Chair Martin noted there was a board quorum.
 - 1a. **EXCUSED ABSENCE:** No motion needed.
2. **CONFIRMATION OF LEGAL POSTING:** Cordier informed the board that the legal notice for the evening's public hearing was published within the Shiawassee County Independent on Sunday, March 25, 2012. A copy of the notification was up front for review. Chair Martin declared the hearing legally published.
3. **APPROVAL OF AGENDA:** Chair Martin stated the Durand Church of the Nazarene has requested to discuss their variance approval. Martin stated a motion would be needed to amend the agenda to place the request under old business as 7b.
Motion: Willis Miller moved to amend the agenda to include 7b. Durand Church of the Nazarene. **Support: Larry Gramer.** Motion carried: 6 ayes, 0 nays.
Motion: Ann Gamboe Hall moved to approve the agenda as amended. **Support: Brad Hissong.** Motion carried: 6 ayes, 0 nays.
4. **APPROVAL OF BOARD MINUTES:** **Motion: N. Brad Hissong** moved to approve the minutes of March 14, 2012 as printed. **Support: Willis Miller.** Motion carried: 6 ayes, 0 nays.
5. **PUBLIC COMMENTS ON NON-AGENDA ITEMS:** None.
6. **COMMISSIONER COMMENTS:** Commissioner Ron Elder discussed that he has been working with the Veteran's Affairs Department and there are plans to increase their hours. Their current hours are 1:00 P.M. to 5:00 P.M., Monday thru Thursday. The Board of Commissioners will be discussing staffing within the department under P.A. 214. Elder stated he has been working with the department since last August. Everything else has been pretty quiet within the County and that the departments have been cooperative with staying within their budgets.
7. **OLD BUSINESS:**
 - 7a. **Dimensional Variance Application - #ZBA11-012**
Applicant/Owners – Douglas S. and Janelle L. Taylor
Site Location – 6351 N. Ridge Road, New Lothrop, MI 48460
Tax Identification – 78-004-06-100-002-01; Sec. 6, Hazelton Township
Request – Allow an above-ground pool with an attached deck to remain within the side yard setback requirements. Proposed – 1 foot setback from western boundary line
Ordinance – 5.3.1.E.1. – Pools shall conform to yard setback requirements as required for accessory uses and structures; and Section 5.3.1.C.2. – Accessory Buildings and Structures; no closer than 10 foot side yard
Variance Requested – 9 feet
Tabled from March 14, 2012

Cordier provided a staff report of the applicant's request to allow an above-ground

pool and deck to remain within the side yard setbacks; noting the deck was one (1) foot from the western property line. Last June the Code Enforcement Officer found the Taylor's had placed an above-ground swimming pool in the back yard and had started building a deck around the pool. Upon review of the property file, staff found no permits were on file with the office. A notice of violation was sent to the Taylor's by staff on June 13th giving them until June 27, 2011 to apply. As there was no response from the Taylor's, a Legal Action letter was mailed to them on November 15, 2011 giving them until November 30, 2011 to apply for the required permits.

On November 30, 2011, the Taylor's submitted a dimensional variance application seeking approval to leave the pool and attached deck one (1) foot off the property boundary line. Cordier said during the review of the application she noted the application was lacking important information. Cordier said she wrote a letter on December 7th and asked them to contact her to discuss the request to see if the pool could be relocated so a variance was not needed and/or if it could be moved so a lesser amount would be requested.

On January 24, 2012, a second letter was written as she had not heard from the Taylors. The letter indicated it would be placed on the March agenda and that requested information was still missing from the request.

On February 16th Cordier stated she did a site inspection to see if the pool and deck were still up as she hadn't heard from the Taylors. She found the site to look the same as it did last June. Cordier said she contacted the Environmental Health Department to determine the location of their septic system, drain field, and well. She also pulled the property file from the basement to gather as much additional information as possible. They home was rebuilt in 2006 after a house fire. The home was built on an angle on a five-acre parcel. The site plan from that reflected the closest point of the home to the west boundary line to be 30 feet. The Health Department also informed her that a swimming pool or deck could go next to the septic tank or drain field as long as nothing was built over top of it.

Cordier concluded that she still had not received any information as to whether or not the pool could be relocated to an area that wouldn't need a variance or relocated so a lesser variance could be considered.

Chair Martin asked the Taylors to comment.

Doug Taylor answered that everything Cordier had stated was correct. They would like to leave the pool and deck where it is right now that is why they were asking for the variance. The first notice they received didn't have a date to respond by. Then they received a second notice.

Janelle Taylor stated she agreed that they should have gotten a permit, but they didn't apply for one. The pool and deck have been there for four (4) years and now there is a problem. She said she didn't understand.

Doug Taylor stated he wanted to respond to the staff report and the close proximity of the pool from the field. If the farmer were to spray chemicals, he had just found out the farmer is required to have a license to spray and that any overspray can't come onto his property. As far as dust; that is not an issue because they probably get more dust coming from the road than the farmer's field. It shouldn't be an issue if it's one foot off the lot line or 10 foot off the lot line.

Chair Martin opened the floor for public comment in support of the applicant's request.

Speaker #1 – Tom Schultz, 6269 N. Ridge Road. Schultz stated he had no objections to the Taylor's request. He had no problem with the location of the pool and deck and didn't feel it should make a difference. Schultz stated that he lived to the west of them but not next door.

Speaker #2 – Judy Schultz, 6269 N. Ridge Road. She agreed with her husband; she didn't have any issues with the request.

Speaker #3 – Mike Potter, 6147 North Ridge. Potter said he owned property to the east of this. He has known the Taylor's for a long time. Potter stated he has been farming for 25 years. Obstacles arise all the time on farm land that we rent. Gardens may be planted too close to a property line or trees. It's just common practice that when farming you might have to back off an area.

Wardell asked Potter if he would be willing to sell a 10 foot strip of land to the Taylor's so a variance wasn't needed.

Potter said he would offer, except he didn't own the farm on that side of the property.

Chair Martin asked for additional comments in support of the request. Hearing none, Martin opened the floor for public comment in opposition of the request.

Speaker #4 – Shane C. Anspach, 19903 Gasper Road. Anspach stated he was speaking on behalf of his father Richard Anspach. He passed out a packet that including a letter, photograph, and survey of the farm which reflected the Taylor's property and three other small parcels.

Preston read the letter aloud: *"We landowners, Richard L. Anspach and Barbara J. Anspach, request that the Shiawassee County Board of Commissioners, deny the application for a 9 foot variance, submitted by the applicants, Douglas S. and Janelle L. Taylor.*

Firstly, approval of this action, is a violation of the law and ordinances set forth by this County. The applicants did not follow proper procedures when installing their pool, in that, no permits were obtained and no site plan was approved.

Should a variance be approved, we have concerns about the pool structure and site location.

- *The structure looks unsafe. The children playing on the deck could fall onto our property and possibly get injured, which, we feel would lead to future litigation from the applicants.*
- *Run off of pool water will damage or kill our crops. As a business person, we depend on the income from these crops to supplement our retirement income. This is our livelihood.*
- *Property line issues have been part of our history with the Taylors. The Taylors existing driveway was partially located on our property when we purchased it. The survey done by "Powell Land Surveying PC" confirmed this point.*
- *Douglas installed the pool after we had purchased the property. He knowingly, without regard for the laws of the county, placed the pool in this location. Survey stakes were placed at various points to designate property lines. Had he followed these lines, he would have known that he was too close too our property.*

Respectfully submitted by: Richard L. Anspach and Barbara J. Anspach"

Shane replied that their concerns were with kids playing on the deck around the pool and/or as well as anyone else. We are concerned with safety. The deck is four foot off the ground and one foot from the property line. A kid could fall off the deck onto our property. Who is liable then if someone is hurt? Us, the Taylor's; could it end up in a third party lawsuit? Kids like to play in pools and toss balls. The balls get tossed out and then the kids would be chasing after the balls that have gone into our field. The Taylors are already coming over onto our field with their four foot lawn mower, which is trespassing. People are sue happy these days.

Wardell asked if he owned the adjacent property to Taylors?

Shane stated it belonged to his parents (Richard and Barbara).

Wardell asked if they would be willing to sell the Taylors a strip of land 10 feet in width to accommodate this?

Shane stated he didn't believe his parents would be.

It was noted the Taylor's home was built in 2006 by a licensed contractor and that permits for the home were secured.

Chair Martin asked for township input.

Cordier replied she had not heard from Hazelton Township on the matter.

Hall asked if permits were pulled in 2006 when the home was built. Cordier stated yes.

Speaker #5 – Chris Anspach, 8590 Easton Road. Chris stated he was opposed to the request. Mr. Taylor wasn't the builder who built the home; however, Mr. Taylor started the deck. I have witnessed Mr. Taylor working on the deck. The deck may be unsafe. Mr. Taylor isn't a licensed builder.

Chair Martin opened the floor to the Taylors for a rebuttal.

Janelle Taylor stated it was their fault for not pulling permits after the home was built, but the pool and deck have been there for the past four years now. We would like to finish the pool and deck so no one is injured. Our goal is to make it as safe as possible for our family and friends.

Doug Taylor agreed with the statement that he wasn't a licensed contractor but that he did know structural code as he was a structural engineer. He was familiar with support requirements. The contractor responsible for building the home was fired on the spot back in 2006. A lot of the mistakes made by the contractor and which had been approved by Gary Palmer, the County Inspector, had to be corrected. We finished building the home, which was in the rough stages when we took over completing the home. The building inspector (Dave Chrenka) helped us with making sure from that point on everything that was done met code. We need the variance because the pool and deck are too close to the lot line. We can't move it anywhere else on the property because it would be too close to the septic and drain field.

Public hearing closed by Chair Martin. Martin asked for board input.

Hall informed the Taylors that when this board reviews an application, they consider what the

least amount would be needed when deviating from the ordinance. Hall then asked the Taylors if they would consider eliminating at least half of the deck so their would be a lesser amount needed and closer to setback regulations.

Doug responded that the pool would have to be moved as well. The pool is only eight feet from the lot line. It can't be moved because of the septic field location. It is currently three feet away from the septic system.

Hall asked again if there was any way possible it could be moved to a new location.

Janelle asked Hall if she meant removing half the deck but allowing the pool to remain where it is because if that were so, she thought that may work.

Gramer asked if he understood the pool was eight foot off the lot line?

The Taylors answered yes.

Gramer said he would have to agree with Ann (Hall). They need more than one variance. Maybe they could consider just a two-foot variance for the pool to remain as an option. The Taylors might want to consider that as an option. This is a self-created hardship, the applicants should have contacted the office for information on permit and setback requirements.

Janelle said they understood they should have done that, but the pool and deck have been there for four years. We understand it doesn't meet code.

Wardell asked why couldn't they locate the pool and deck on the other side.

Doug answered because of the septic field.

Wardell asked him if he was aware there could be overspray if the farmer were to spray his crops?

Doug stated he wasn't aware of that until about two weeks ago when he checked into that.

Wardell recommended the pool and deck be moved away from the property line because of the possibility of overspray; especially if it were a windy day.

Doug replied that the person that is responsible for spraying is required to be trained in that area and licensed.

Hissong noted that a lot of work went into the writing of the County Zoning Ordinance. The guide lines for setbacks were written for a reason. The case before them right now was self-created. The farmer already has to drive around it. They put the pool in without permits. This is a self-created hardship.

Chair Martin stated unless there was additional discussion from the board, he would ask staff to proceed with the Findings of Fact.

Findings of Fact: Section 18.4.6 of the Ordinance outlines findings that must be made for the Board of Appeals to take action.

1. *How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of the petitioner's property.* **Staff: Commencement of the above-ground pool and attached deck began without securing the necessary zoning, building, and electrical permits or inspections.** If applications would have been submitted prior to commencement, the owner's would have been informed of side yard setback regulations. Staff believes this to be a self-created hardship by placement and construction of the pool and deck prior to Zoning permit approval.

ZBA Findings: Concur with staff's findings.

2. *Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.* **Staff: No unique or physical circumstances were presented prior to the writing of the staff report.** A review of the septic system and drain field site plan may be considered as a practical difficulty with location of the pool and deck to the rear of the home. The angle of the dwelling and location on the five acre parcel, septic system location and other buildings has created the practical difficulty in allowing a deck to be placed around the pool and connected to the home.

ZBA Findings: Concur with staff's findings.

3. *Specific findings (characteristics of the land) showing that because of the physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance. That the authorization of a variance is, therefore, necessary to enable the reasonable use of the property and that the condition is specific to this property and not general to other properties in the area.* **Staff: The applicant made no contact with office staff with regard to the variance application request.** At the time of the staff report it was not known if other options could be met so a variance would not be needed and/or a lesser amount instead of the request of nine (9) feet.

ZBA Findings: Pools are a nice recreational use on one's property. Everyone in the country has a drain field, so that is not an unusual circumstance on the property. There was nothing unusual brought forward. The board concurred with staff's findings as well.

4. *Finding that the practical difficulty was not created by the applicant and is related only to property that is owned or occupied by the applicant.* **Staff: The pool and construction of the deck was started without zoning and building approval.** The location of the septic and drain field may be considered as part of the practical difficulty as well as the angle of the newly constructed home in relation to the western boundary line.

ZBA Findings: The applicants created the difficulty by installing the pool and building the deck without permits.

5. *A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.* **Staff: Approval of a one (1) foot setback from the adjacent land would be precedent setting.** The area directly to the west is a farm field. The use of the farm field such as planting, spraying of chemicals, harvesting of crops, dust, etc. need to be considered due to the close proximity of the pool and deck to the lot line. Maintenance and/or activities around the pool could be an issue as well.

ZBA Findings: Creating a reasonable use of property so that it can be developed without a substantial difficulty or developed in a way that no variance would be needed. The board agreed with staff's findings.

6. *The proposed variance does not permit the establishment of any use which is not permitted by right within the district or any use or dimensional variance for which a special use permit is*

necessary. **Staff: Above-ground pools and decks are a permitted use within the A-1 District by zoning and building permit application and approvals.**

ZBA Findings: Concur with staff's findings.

7. *Findings on whether the proposed development complies with the requirements, standards, or procedures given in the Zoning Ordinance or an interpretation of the disputed ordinance provisions, if applicable.* **Staff: The request would otherwise comply if setbacks were met.**

ZBA Findings: Concur with staff's findings.

8. *Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.* **Staff: No error in judgment or procedure is evident.**

ZBA Findings: Concur with staff's findings.

9. *The possible precedents or affects which might result from the approval, denial of the appeal.* **Staff: Allowing the deck and pool to be setback one (1) foot from the side lot line would be precedent setting unless it has been proven during the public hearing that unique physical circumstances leave no other option available for location of the above-ground pool and deck to be located on the premises.**

ZBA Findings: Concur with staff's findings.

10. *Findings on the impact if the appeal is approved, on the ability of the County or other governmental agency to provide adequate public services and facilities and/or programs that might reasonably require in the future if the appeal is approved.* **Staff: No impact on public services is anticipated.**

ZBA Findings: Disagreed with findings, the land adjacent is not developed. Room is needed for emergency vehicles to get back there. This would have a negative impact.

Motion: N. Bradley Hissong moved that the dimensional variance request from Section 5.3.1.C.2. (Accessory Buildings and Structures; side yard setback, and; 5.3.1.E. 1. Swimming Pools) as outlined within the 1999 Zoning Ordinance requirements for Douglas and Janelle Taylor, (applicant/property owners), referencing Tax Id. Parent Parcel Roll Number: 78-004-06-100-002-01, Section 6, Hazelton Township, and located at 6351 N. Ridge Road, New Lothrop, MI, to allow an above-ground swimming pool and attached deck be located **one (1) foot** from the western boundary property line (a variance request of nine (9) feet) be **denied** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, and based on the Findings of Fact within Section 18.4.6. **Support: Larry Gramer.**

Discussion: None.

Roll Call Vote: Ayes to Deny: Ann Gamboe Hall, Willis Miller, Gerald Wardell, Larry Gramer, N. Bradley Hissong, and Henry W. Martin III. **Nays:** None. Motion carried: 6 ayes, 0 nays.

Chair Martin informed the Taylors that their request was denied and that they could not resubmit an application for one year unless they brought back documentation or new information that had not been presented and/or documentation that conditions have changed in order for this body to consider a rehearing.

7b. Dimensional Variance Application – ZBA12-001

Applicant/Owner – Durand Church of the Nazarene

Site Location – 9725 E. Monroe Road, Durand, MI

Tax Id. 78-012-15-200-025, Section 15, Vernon Township

Request – Amend motion of February 8, 2012 to allow for white lighting versus amber.

Ken Themm was present to represent the Durand Church of the Nazarene. Themm discussed how computer generated LED signs allow messages to be changed from inside a building. The light bulbs available are red, yellow, and green. After the church received their variance to allow for the new sign with amber lighting, the sign company informed them that the sign package had to be upgraded. Now we have a large number of colors available to us. We would like the ability to use white letters. At the February meeting, everyone was concerned with flashing signs and/or the brilliance of the lighted sign in the evening.

Preston reminded the board that after the motion was made in February, the board also entered a motion to have the Planning Commission review the current sign language within the Zoning Ordinance for possible amendment or updating. Mr. Themm contacted the office to see if they could change to white lettering. He was informed he would have to come back before this board because the motion clearly stated color of LED held to amber only. The board would have to decide if they want to put it back on agenda so the township and adjacent property owners can be advised of the proposed request.

Preston recommended scheduling it for a public hearing next month as there was no way of knowing if someone would object to different lighting than what had originally been proposed.

Gramer asked if the sign framing was to remain burgundy with a changeable background?

Themm stated it would be black background with white lettering or with amber lettering. We would have the ability to switch from amber to white.

Wardell asked if he meant each word would be a different color?

Themm said they would either have it all in white lettering or all in amber lettering.

Chair Martin recommended to the board that it be postponed until next month to allow for proper notification.

Motion: Larry Gramer moved to allow the Durand Church of the Nazarene to present new information with regard to their Dimensional Variance Application #PZBA12-001 and board motion of February 8, 2012 on the next regularly scheduled Zoning Board of Appeals hearing. **Support:** N. Bradley Hissong. **Motion carried:** 6 ayes, 0 nays.

Themm asked if the church could proceed with applying for the sign and apply for their building permit.

Preston answered that if the church felt comfortable in doing so with ordering the sign package prior to any possible amendment to the original motion. Preston explained that by holding a hearing next month on the request did not guarantee the request would be granted.

8. **NEW BUSINESS:** None.
9. **INTERPRETATION OF THE ZONING ORDINANCE:** None.
10. **ZONING ADMINISTRATOR'S REPORT:** Cordier stated the office has received two variance application requests and will be placed on the May agenda along with the Durand Church of the Nazarene's request.

11. **BOARD MEMBER COMMENTS:** None.
12. **PUBLIC COMMENTS:** None.
13. **ADJOURNMENT:** Motion: Martin moved to adjourn the public hearing, support by Miller. Motion carried: 6 ayes, 0 nays. Meeting adjourned at 8:00 P.M.

Recording Secretary – Linda Gene Cordier

Henry W. Martin III, Chairman
Zoning Board of Appeals

May 9, 2012
Approval Date of Minutes