

MINUTES OF THE REGULAR MEETING OF THE GEORGETOWN CHARTER TOWNSHIP  
**ZONING BOARD OF APPEALS HELD AUGUST 25, 2010**

The meeting was called to order at 7:30 p.m. by Chairperson Joyce Weise.

Members Present: Joyce Weise, Carl DeVree, D. Dale Mohr, Greg Honderd, Jeannine Bolhouse, alternate  
Members Absent: John Fanthorpe  
Others Present: Mannette Minier, Secretary and Zoning Administrator; and the applicants

**#100825-01 - Approval of the minutes**

The minutes of the regular meeting held on July 28, 2010 were presented.

**Moved by Greg Honderd, seconded by Carl DeVree, to approve the minutes as presented.**

**MOTION CARRIED UNANIMOUSLY.**

**#100825-02 – (VAR1005)** PBM Wireless LLC, 28602 CR 50, Nappanee, IN, is requesting to have an unpaved access driveway and unpaved parking facilities, a variance from Sec. 26.3(A) which states that all parking facilities and access driveways shall be hard surfaced with a pavement having an asphalt or concrete binder, in a (RR) Rural Residential district, on a parcel of land described at P.P. # 70-14-05-200-021, located at 3334 Filmore St., Georgetown Township, Ottawa County, Michigan.

The Zoning Administrator presented a review as follows.

**REQUEST**

(VAR1005) PBM Wireless LLC, 28602 CR 50, Nappanee, IN, is requesting to have an unpaved access driveway and unpaved parking facilities, a variance from Sec. 26.3(A) which states that all parking facilities and access driveways shall be hard surfaced with a pavement having an asphalt or concrete binder, in a (RR) Rural Residential district, on a parcel of land described at P.P. # 70-14-05-200-021, located at 3334 Filmore St., Georgetown Township, Ottawa County, Michigan.

The site is located in the Rural Residential district. Sec. 7.3(C) allows any special use permitted in the LDR district and Sec. 8. 3(O) allows commercial wireless communications towers with a special use permit in the LDR district.

Sec. 26.3 requires all parking facilities, access driveways and commercial storage areas to be hard surfaced with a pavement having an asphalt or concrete binder. **The request is to allow the access driveway and parking spaces to be gravel.**

**DISCUSSION**

The applicants have an alternate option for the location of an AT&T wireless communication antenna. At the August 9, 2010 meeting, the Utilities Committee authorized proceeding with engineering for the construction of a water storage tank on property recently acquired by the Township on 36<sup>th</sup> Ave. near Fillmore St. The engineering has already begun and construction is

expected to begin early in 2011. The water tower will be 150 feet tall and will be constructed to accommodate three wireless communication antennas. This tank will be located only 1500 feet from the site of the proposed cell tower.

The wireless communication company (as well as other carriers), has the opportunity to co-locate on this water tank without the necessity of constructing a cell tower. The only issue may be the necessity to wait a few extra months for the construction of the water tower. However, the cell tower could likely be in place for many years to come and waiting a few months now may alleviate the construction of the tower.

Due to the fact that the Township does not want to see a proliferation of cell towers, a special use permit standard was adopted to require a minimum distance of 2 miles between cell towers and to require tower owners to allow co-location. It appears as though the construction of the water tank provides an opportunity to eliminate the location of a cell tower merely 1500 feet away and to reduce negative effects due to the visual impacts of a cell tower. Although this site is currently rural in character, the opportunity exists for future residential development in this area, including homes from the Lowing Woods Plats (Eastbrook Development PUD approved and currently under construction starting from Bauer Road and working north to northwest). This information should be considered when the ZBA deliberates and reviews the seven standards of the ordinance that must be met in order for a variance to be granted.

The site also appears to have nonconforming elements as detailed in the History Section.

## **HISTORY**

In 1988, Nile Thompson applied for and was granted a variance to construct a pole barn style accessory building on the property for a stable for horses before constructing a residential homestead. The application, letter from the applicant and the minutes from 1988 are attached. Note that the request was to construct the accessory building prior to the construction of the home on the site and the variance was need because Sec. 3.4(L) which states that an accessory building could not be located on a parcel without a principal building (house) or use. The letter from the applicant states the use is for a stable for two horses and “with the full intention of constructing a residential home at a later date.” Note that now twenty-two years later, the accessory building is not used as a stable for horses (it appears to be used for storage) and no home has been constructed. Further, the variance had been granted “due to future home to be built on same parcel land.”

Consequently, it appears as though a nonconforming situation exists on the site since there is an accessory building which appears to be used only for storage now exists on a parcel without a principal building.

Further, the construction of the cell tower may further prevent the construction of a house on the site, which was to have taken place as per the variance that was granted.

Variance standards in Sec. 28.11(C) are required to be met in order for a variance to be granted. The standards that have objectively been met are noted with an “X” in the “yes” column. The others are open to interpretation by the ZBA and the ZBA should determine if those standards are met.

|             |  |
|-------------|--|
| Variance ID | <b>VAR1006</b>                                     |
| Applicant   | PMB Wireless                                       |
| Address     | 3334 Fillmore St.                                  |
| Request     | To have a gravel access driveway and parking space |
| Date        | Applied for August 25, 2010 meeting                |

| # | YES | NO | CONDITIONS (Chapter 28.11-C)   |
|---|-----|----|--|
| 1 |     |    | Granting the variance(s) will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.  |
| 2 | X   |    | Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.   |
| 3 |     | X  | That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance. |
| 4 |     | X  | That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.  |
| 5 |     | X  | That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.   |
| 6 |     |    | That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance with Section 27.12.   |
| 7 |     | X  | That the variance is not necessitated as a result of any action or inaction of the applicant.  |

**Standard #1** - *Granting the variance will be in the public interest and will ensure that the spirit of the Ordinance shall be observed.*

**The ZBA should determine if this standard has been met.** *The spirit of the ordinance is to regulate the pavement of driveways, storage areas and access driveways. Although this driveway will only service those having business with the tower and may not adversely affect the general public per se, the fact that construction of the tower may not be necessary at all should be considered. At the April 22, 2009 meeting, the ZBA granted a similar variance for (VAR0906) Verizon Wireless to have a gravel driveway access at 1625 Fillmore St. However, the site was located on a portion of Fillmore St. where the roadway was gravel and was not paved. That is not the case here since this portion of Fillmore St. is paved.*

*Standard #2 - Granting the variance shall not permit the establishment within a district of any use, which is prohibited, nor shall any use variances be granted.*

**Met. The use is allowed with a special use permit as long as the proposal complies with the special use standards and other Township ordinances.** Again, due to the fact that another opportunity exists for the antenna to be located on the water tower merely 1500 feet away, **the Planning Commission may determine that the special use standards are not met for the use of the cell tower because it may be detrimental to the neighborhood since it is unnecessary (in which case the special use permit may not be recommended for approval by the Planning Commission or approved by the Township Board).**

*Standard #3 - That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.*

**NOT MET.** Although the ZBA determined that it was not practical or reasonable to require a paved driveway on the other cell tower site at 1625 Fillmore, that portion of Fillmore was gravel and not paved like this portion Fillmore. Further, the site at 1625 Fillmore was on a portion of the road that was not used by the general public and was only used by the gravel companies to access their mining sites.

**At any rate, the reason for the request at this site is related to financial issues for the construction of a long paved driveway and parking area, as noted in the submittal materials. There are no practical difficulties that result from exception or extraordinary circumstances on the property that prevent the driveway and parking area from being paved.**

*Standard #4 - That the granting of such variances will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions of an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.*

**May not be met.** Although this driveway will not be used by the general public and will only be used by those accessing the site, the construction of the cell tower may not be necessary since the antenna could be located on top of the water tower. **The CONSTRUCTION of the cell tower at all may be determined to be detrimental to the adjacent properties due to the fact that it is unnecessary and the antenna could be located on the water tower.**

*Standard #5 - That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.*

**May not be met.** Although the ZBA determined that it was not practical or reasonable to require a paved driveway on the other cell tower site at 1625 Fillmore, that portion of Fillmore was gravel and not paved like this portion Fillmore. Further, the site at 1625 Fillmore was on a portion of the road that was not used by the general public and was only used by the gravel companies to access their mining sites. **No other properties have the property right to have a cell tower without pavement of the access driveway and parking spaces.**

**Standard #6** - *That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, except in accordance in Section 27.12.*

**The ZBA should determine if this standard has been met.** The site appears to have a nonconforming situation because the accessory building was constructed with a variance that was granted contingent upon a house being constructed in the future and the accessory building to be used to for two horses. The accessory building now appears to be used for storage and no house was ever constructed.

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

**May not be met.** It appears that the only reason for the request is related to finance reasons as listed in the submittal material and no other justification is provided by the applicant in the submittal materials other than they say is not needed.

Judd Chaille, Chaille Tower Consultants, LLC, represented the applicant and presented the request. He stated the following. AT&T has a quest in the community to provide service. The application was submitted in conjunction with an application for a special use permit to have a cell tower which will be reviewed by the Planning Commission later. Answers were provided for the seven standards in a way he felt pertained to the criteria. Cost was only one concern. There is a threshold as to when a job becomes not cost-effective. They rarely pave the driveways at any of their facilities. There already is an existing unpaved driveway and they would use the driveway infrequently. They would not significantly add to the traffic on the road or driveway. Regardless of what happens with the variance, the intention is to still go through with the project because they are developing a whole network and they are mandated to provide a network service. They are trying to fulfill the mandate. The company would have cell technicians make minimal site visits of about once or twice a month with a van or light truck to check the compound to make certain that the site is kept tidy and nice with everything secure and the alarm system working. The technician would check the equipment inside the shelter and on the tower, though he would not necessarily climb the tower.

Judd Chaille addressed the seven standards as follows. One, the gravel drive already exists and, except for the addition of the tower, the driveway would remain the same. A locked entrance gate exists and would remain. Two, the site already has a gravel drive and they are proposing to use it with only a small extension. There will be an easement and the lease agreement has already been fully executed. Three, outside of the additional cost, only infrequent visits will be made to the site and pavement is not needed. The requirement in the ordinance implies that there would be public traffic coming and going and the pavement surface would wear better. This is an unmanned facility that does not need traffic. He did not know about the variance in 1988 and it does not pertain. He met with the landowner who mentioned a retirement house possibility. The site was purposely designed with the tower facility out of the area where a house would go so that it would not affect the future possibility of the house being built and it still could be built. Four, there will be a limited amount of usage and this will be no different than the property owner coming and going. Five, AT&T wants to be cost effective and each site has a predetermined budget with expected costs to be a certain amount. If the tower was taller, it could cover more than this specific area. The inability to have this tower could affect customers in a detrimental way. Six, he questioned if there were nonconforming elements.

The zoning administrator responded that she preferred that the ZBA make this determination since the minutes were provided from the 1988 ZBA meeting when a variance was granted for the construction of an accessory building without the presence of a principal building or use with the intention that a residence would be constructed soon. She noted that twenty-two years had passed and no house had been constructed. She also noted that the construction of the tower on the site could detrimentally affect the future possibility of a house being constructed, whether by this property owner or a future owner, as stipulated in the variance approval from 1988.

The applicant asked if any time frame had been stipulated in the variance approval and was told no.

Judd Chaille continued with his response to the standards as follows. Seven, for all projects, AT&T strives to cost effectively provide services. This was addressing a need where a hole exists in the network. The spot has been identified and AT&T knows where coverage is lacking based on compliant calls. Sometimes they can fix the problem by reconfiguring the antenna, but in this instance, a new tower is needed because the target area did not have a tower. They had no knowledge of the water tank being constructed when they applied. His understanding is that the water tower construction would be completed in August 2011 and the longer time frame would negatively impact the service by the delay with the additional network.

The zoning administrator asked why there were two parking spaces shown on the plan, what the accessory building was used for and how long the tower was expected to be utilized.

The applicant responded as follows. The second parking spot may be used occasionally or else it was used as a turnaround. The accessory building was used for hay storage, horses and to store a vehicle. The lease with the land owner was for 25 years due to cost projections, which would make the tower cost effective.

The zoning administrator stated that the period of a few months to a half of a year to wait for the construction of the water tower was minimal compared to the possibility of the tower existing in the Township for 25 years.

D. Dale Mohr asked if the driveway would have to be paved if the house was constructed.

The zoning administrator presented the ordinance section and said that the ordinance requires a paved access driveway for all uses in all districts other than single or two family dwellings in the AG and RR district and in all districts requires that the area between the pavement of the road and the right-of-way line be paved if the road is paved; therefore, on this site in the RR district, the driveway could remain gravel if only a house was constructed and the area between the pavement of Fillmore and the right-of-way line would be required to be paved.

The applicant stated the following. This is a good site for the density of the area with the surrounding developments and due to the fact that there is no residence on the site. A cell tower cannot be hidden and there are no close neighbors. This is going to be a short tower.

Greg Honderd said that these elements were related to the special use standards and were Planning Commission issues, not ZBA issues.

There was discussion regarding Sec. 26.3(A) of the ordinance related to the requirement of a paved access road and paved parking. The zoning administrator stated that the ordinance requires all access roads and parking to be paved in all instances and for all uses other than for single and two-family dwellings in the AG and RR districts.

Greg Honderd said that the ordinance was formulated for commercial uses and for other uses where there were concerns related to dust control and keeping mud from going on the road.

D. Dale Mohr asked if the ordinance mentioned the frequency of traffic on the site as a standard and was told no.

Greg Honderd asked about the TV station nearby and if their driveway was paved.

The applicant said that this site will be unmanned; however, there will be a lot of commotion during the construction period.

Greg Honderd asked if the site would be paved during construction and was told no because the big trucks would break it up.

D. Dale Mohr noted that there are very few close neighbors.

The applicant indicated that they had initially approached the neighbor to locate on his parcel.

Joyce Weise asked if AT&T would provide better service to other areas with the new tower.

The applicant stated the following. They were limited with the 100 foot maximum height stipulated in the ordinance for nonpublic land. A tower was typically 180 to 220 feet high and the higher towers typically covered a four to six mile radius. This tower, with the height limitation of 100 feet, would have less capacity. Due to the proximity of the campus with the younger crowd who all have cell phones, the anticipation is for this tower to provide coverage for times when the network currently crashes or with the current limits on the number of calls that can be made during peak hours. This tower should complete the hole in the network and boost the capacity during peak hours.

Nile Thompson, 8985 Victor Ave. and landowner of 3334 Fillmore, stated the following. He initially had planned to build a house on this site when his daughter graduated from medical school; however, there is no way to build without septic available and he can't build in clay. The driveway is a two-track that is graded and filled in every four years. The road is filled with road gravel 16 to 20 inches deep. Every four years it is redone, but now he was waiting for the cell tower. There is a solid base and a vehicle would never get stuck.

Joyce Weise asked when the applicant became aware of the water tower.

The applicant said that he became aware of it only a couple weeks ago after the application had been in for 2 to 3 weeks and the fees had already been paid.

D. Dale Mohr said that the Township Board just decided a month or two ago to buy the property and had just last month contracted with the engineer.

Joyce Weise asked about the water tower height and was told it would be 150 feet high. She asked about the distance from the proposed site to the water tower and the applicant said that it was 2140 feet.

The chairperson opened the public hearing. No one was present to make public comments at this time. The chairperson closed the public hearing.

D. Dale Mohr said that personally he did not have a personal problem if the driveway remained gravel; however, his job was to address the request relative to the seven standards in the ordinance and the application does not meet standard number 3, 5 and 7.

**Moved by D. Dale Mohr, seconded by Carl DeVree, to deny variance (VAR1005) PBM Wireless LLC, 28602 CR 50, Nappanee, IN, to have an unpaved access driveway and unpaved parking facilities, a variance from Sec. 26.3(A) which states that all parking facilities and access driveways shall be hard surfaced with a pavement having an asphalt or concrete binder, in a (RR) Rural Residential district, on a parcel of land described at P.P. # 70-14-05-200-021, located at 3334 Filmore St., Georgetown Township, Ottawa County, Michigan, based on nonconformance with the seven standards of the ordinance. Specifically, standards 3, 5 and 7 have not been met.**

**MOTION CARRIED UNANIMOUSLY.**

**#100825-03 - Adjournment**

**Moved by Greg Honderd, seconded by Carl DeVree, to adjourn the meeting at 8:30 p.m.**

**MOTION CARRIED UNANIMOUSLY.**