

Armada Township

ZONING BOARD OF APPEALS

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ZONING BOARD of APPEALS

Minutes

Tuesday June 20, 2023

7:00 p.m.

-
1. CALL TO ORDER: Chair Hicks called the meeting to order at 7:03 p.m.
 2. PLEDGE OF ALLEGIANCE: Chair Hicks lead the audience in the Pledge of Allegiance.
 3. ROLL CALL: Members Present: Chair Hicks, Board Liaison Goetzinger, Kehrig, Moegle, Xagoraris. Members Absent: None. Also Present: Cris Martin, Recording Secretary.
 4. APPROVE / AMEND AGENDA: **Motion** by Kehrig, second by Xagoraris, to approve the agenda as presented. **All Ayes, Motion Carried.**
 5. APPROVAL OF MINUTES: **Motion** by Kehrig, second by Xagoraris, to approve the minutes of the November 18, 2022, meeting as amended. **All Ayes, Motion Carried**
 6. PUBLIC HEARING: **Boo Boo's Boneyard, LLC Dimensional Variance: Motion** by Kehrig, second by Goetzinger, to open the public hearing for Boo Boo's Boneyard at 7:07 p.m. **All Ayes, Motion Carried.** Note: Public hearing publishing and adjacent property notifications documentation was available but not requested to be presented. The applicants, Sabrina Terenzi and Kate Opalewski ran a video of drone footage of the property as well as video of the interior of the barn areas. Kehrig read the result of the Special Land Use hearing from the Planning Commission. Ms. Opalewski presented the request to the board to consider the differences between a "kennel" and their business. Confirmed hours of operation Mon-Fri 6:30 a.m. – 7:00 p.m. and Sat, Sun 8-10 a.m. and 4-6 p.m. only for boarding pick-up and drop-off. Extra traffic perceived includes family and friends visiting after hours. Macomb County will not issue a kennel license until all township approvals are granted. Bordman is considered a major thoroughfare on the Armada Township Zoning map.
 7. Comments: Patricia Fons, 21515 Bordman, Allenton; Terry Scott, 21510 Bordman, Armada; Michelle Fogarty, 21330 Bordman; Armada: Greg Hill, 75960 Brown Rd, Romeo, Richard Tucker, 75036 McKay, Romeo. Concerns about extra traffic on the road; worried about property values; running business without license; dogs bark; smell; love animals but it's not the right place, concern if a dog were to get loose, rules are in place for a reason, setting a precedent. Martin Hauer, Lenox Twp; Lori Delmotti, 20621 Pratt Rd, Armada, John Blanchard, 52173 Highberry Ct, Chesterfield Twp; Lea Walkowski, 74901 True Rd, Armada; Bailey Lane 21900 Bordman, Armada; James Ahearn 29336 Charlotte Ln, Chesterfield; Best boarding and day care in the area. The applicants have character; Sabrina is a dog whisperer; they are trustworthy; treat their clients and their pets like family; work very hard; very organized; require clients to follow rules for drop-off and pick-up; regimented, dogs must be leashed before exiting a vehicle; can watch your animals on Facebook; the facility is always clean; never hear barking; asset to the community, bringing business to the community; increasing traffic is happening on all township roads, not just Bordman due to growth; would rather have BooBoo's next door than hunting dogs.

Letters from Karen Zaidan, Andrew Iwan, Darrel Dossin, Connie Parr and Jeff Kaltz were read into the record in support.

Motion by Goetzinger, second by Kehrig, to close the public hearing and proceed at 8:08 p.m. **All Ayes, Motion Carried.**

8. NEW BUSINESS: **Boo Boo's Boneyard, LLC Dimensional Variance:**

9. **Hicks:** The public hearing is now closed, and the board will begin its deliberations.

Goetzinger: Now, just to be clear for anybody in the audience, particularly the applicants, will they have an opportunity to answer any questions throughout this process? -

Hicks: Oh yeah, the board may direct questions to you as we proceed.

Goetzinger: - I just wanted to make sure you guys are aware, when called upon though.

Hicks: Yeah.

Kehrig: Madam Chair, may I go through the finding of facts of what they actually need?

Hicks: Sure, go right ahead.

Kehrig: The specific requirements in section 13, ah, 16:31 of the Armada Township Zoning Ordinance is called the raising of fur-bearing animals, including kennels. It's kind of a cover-all. The specific requirements are:

1, it's a minimum of ten acres, and they've met that, they have 10.1 they are just over a little bit.

The site must abut a major, a roadway designated as a major thoroughfare in the Armada Township Master Plan, and it is, so they've met that.

There shall be provided at least 100 square feet for each animal, including area devoted to interior kennel space and runs, and the planning commission determined that they have adequate, for more than they have now.

All interior buildings used for the keeping of animals shall be soundproofed, and you've gone through that, the soundproofing of that actual kennel building? (Applicant nodded yes).

All animals shall be kept in soundproofed buildings between 8:00 p.m. and 8:00 a.m. and you've already discussed your hours and there are no animals allowed out in the play yard.

Terenzi: They are allowed out for last call, just not play.

Kehrig: Ok, here's the first sticking point: Exterior dog runs and non-soundproofed interior buildings shall not be located closer than 200 feet to the property line. Your building is soundproofed so it's your dog run that has to be 200 feet from the property line, and currently your dog run is 53 feet. So you need a 200 ft, and you have 53 so you need a 147 foot variance in order to meet that requirement for the dog run of 200 feet.

Soundproofed interior buildings shall be located at least 100 feet from any property line. Your soundproof building is also 53 feet from the property line so that is a 47-foot variance that you need for the building.

Goetzinger: I believe the lot width is less than 300 ft.

Kehrig: Oh, I'm sorry, thank you. Jim pointed out I didn't read far enough (on requirement # 1), the 10 acres with a minimum lot width of 300 feet, and you are at 275 so you need a 25-foot variance on your lot width.

And I have one question that I noticed today, on the other side yard, doing the math, it looks to me like it's 182 ft to the, would it be the west side, it's not dimensioned on the, on the site plan, would that be correct?

Goetzinger: of the soundproofed building?

Opalewski: (inaudible)

Kehrig: What I did is I took the 53 feet plus the dog run of 40 feet, that's 93 feet and subtracted it from your 275 and came up with 182.

Terenzi: Yep, ok.

Kehrig: so technically you do need an 18 ft variance from that side line as well.

Opalewski: Why?

Kehrig: Because it's 200, it's less than 200 feet from your outdoor play area to the western side lot line, it should be 200 feet.

Opalewski: Ok so we may need to speak to the deficiency in the way the zoning ordinance is written.
Kehrig: Ok, but as written it does say 200 feet to an exterior dog run, and if I am correct, you've got 182 feet so to me it seems like you need an 18-foot variance from the west and a 147-foot variance on the east.

Opalewski: Why was that not brought up during the planning commission meeting?

Kehrig: I don't think it was caught, I just noticed it today when I was eating dinner. I just figured that it's not, it does say 200 feet.

Opalewski: OK that presents a significant issue that we are not prepared to address.

Goetzinger: It still requires a variance, that's why we are here tonight.

Kehrig: If you can meet, if you get a variance for the 147 feet, I don't think the 18, I just want to cover the bases for you, so that. If it doesn't get mentioned, then you might have an issue down the road. So I just want it to be covered in this meeting if it goes that way so that you get all, everything you need.

Opalewski: Right.

Kehrig: Ok, so that is what I see, is actually, a 147 ft variance on the east side, and an 18 ft from the west. The 47 ft variance for the building to meet the 100-foot requirement for the soundproof building, and then the 25 ft deficiency in the lot width, so that's those four, that's four.

Opalewski: Ok, so again, we can talk, we can point to the deficiency in the way that the ordinance is written.

Kehrig: Ok.

Opalewski: Correct me if I'm wrong, but if the minimum site width is required to be no less than 300 ft, it's not possible for an exterior dog run or non-soundproofed interior building to be no closer than 200 feet to any lot line. So the way that requirement number six of the ordinance is written prevents a property owner, who may comply with the minimum site size, or not, from ever being able to meet the side yard setback requirement.

Goetzinger: (inaudible).

Kehrig: You can meet the requirement if you don't have an exterior dog run, or if you don't have a non-soundproof building.

Opalewski: But those are uses that are permitted that we were given approval for.

Kehrig: With a variance, correct.

Opalewski: Right.

Kehrig: But no, you cannot meet the requirement of the ordinance for an exterior dog run on the minimum width lot, it would have to be an all-interior soundproofed building in order to meet the ordinance with the minimum 300 foot, you are correct.

Opalewski: So not only is it impossible but it is unworkable -

Kehrig: You could meet it with a -

Opalewski: With a pond sitting in the middle.

Kehrig: with a minimum. No, you cannot do everything on the minimum size, you are correct.

Opalewski: So that speaks to the (inaudible).

Goetzinger: Are we going to discuss this as a board?

Hicks: Yes, we have pretty much covered everything.

Goetzinger: Well, I would like to talk.

Kehrig: Ok, let's let the board discuss it (inaudible).

Goetzinger: I definitely appreciate the passion, the vision that they have, I think if you are going to do something, do it well. It's certainly clear from the feedback received tonight that they have gotten there. Unfortunately, I do think it sounds like twice, they put one foot, you know, they put the cart before the horse, they didn't come in and get the approvals, you know, before they bought the property, or considered the dimensions of the property limitations, so it puts us in this, I call it an awkward position where they have an established business and I think it's important that we try to be impartial. Take the emotion out of it. We have to look at what our ordinances say, and if there is a practical reason that there should be a variance, and we've heard feedback from a lot of people. And, again, it was very positive for the patrons, I'll say they have a vested interest in some regards, and generally they didn't appear to be local for a

majority of them, but their support is certainly appreciated. The neighbors, from what I have heard, seem to have concerns. And the variances that are being requested are very significant. I mean a 150 foot variance on a, 50 foot, it needs to be 200, I mean and some of the people who did speak also said all of these same comments that I had. But we have ordinances for a reason. We are not here today to debate the ordinance. If that were to change, that's at the planning commission level.

Opalewski: We don't feel that we're free from legal obligations, I think everyone needs to understand that. But variances exist for this very reason. Because things change. And I think you need to grow and adapt with change.

(Unidentified attendee): Why not challenge the current dimensions?

Goetzinger: But that's not what, this board's here to issue a variance, not to change the ordinance. That's what I want to make clear to everyone.

Hicks: Yes, that's, that's not our scope of work, no matter how much we would maybe want to in some cases.

Opalewski: So, (inaudible) Ok

Goetzinger: Wait, we'll come to you. I'm definitely concerned about setting a precedent. I mean, as a resident who lives in a similar area, agricultural preservation district, I certainly have, I know dogs, when they're happy, they bark less, but they still bark when they're playing, you know I would have concerns living next to 60 dogs you know and it's not, and they have up to that. They may not be there now, they may do a great job now. Things can certainly change so that's the concern you know. You set a precedent, what prevents somebody else from coming in with the exact same request. They happen to buy a parcel that doesn't even meet our one to five, it's one to five width to depth, so now it's not, it doesn't meet even our normal lot dimensions, and now it's made it even harder for them to meet these requirements of the ordinance, so. It's, it's, again, it's not even close, as DJ mentioned there's an overlap even on both sides of the property, so if you wanna have a kennel, they want to have their vision and it has this outdoor run, in my opinion this isn't the right parcel to do that. I think that is where we are at. Again, if they would have done, and people make mistakes, but if their due diligence had been done ahead of time, again, they did this on the previous property. Just because someone didn't call before, doesn't make that right, so you can't blame, if you will, it on a neighbor now who happened to make the complaint, doesn't make you right just because nobody told on you before. So, I just think that if it was a couple feet you could maybe argue it, but it is still not a practical difficulty, this was their decision to buy this piece, there's land available, there's 100 acres somewhere, you know, if you had to, to meet all your requirements. I just think it is important that we consider all that.

Kehrig: Madam, Chair?

Hicks: Yes

Kehrig: The other thing I think we should consider. Not only are we bound by, you know, the rules to break the ordinance and give a variance. I did stop by the facility today, and if I could give Sabrina a variance, I'd do it in a heartbeat, but the variances go to the property. So, we have to look at the parcel. And when they move, the variances will still be on that parcel. So, whoever the next person that comes in can run, let's say, the 60-dog daycare. we really, I mean that's why we say it's not personal. We take all the emotion out of it. We don't look at the people. They are doing an awesome job. The only time the dogs barked is when they saw me, because I was where I wasn't supposed to be, but. They are doing an awesome job and I know they would do an awesome job somewhere else. This parcel is, is quite large in the variance that it needs. I think that if they feel that the ordinance is not workable, that they pursue that avenue with the Planning Commission. This ordinance is a, I don't know how long, it it's been a while, but I do remember Berlin and Ray both have 100-foot setbacks from property lines. I remember when we were doing this, we liked the fact that we had a larger setback, even though we knew we were one of the bigger setbacks in the area. Just to keep, mitigate you know the, the nuisance aspect of it. Like, things change. I really would like to have you come to the planning commission and help us craft a better ordinance, if there's, you know, there is never a perfect one, but I think that this is a really big variance and a big precedent.

Opalewski: But that doesn't preclude us from applying for and being granted a variance.

Kehrig: Right

Opalewski: So, you are making your decision right now without even allowing us to prove our practical difficulties.

Kehrig: Right, We

Opalewski: We haven't been able to verbalize those. So, aside from how large the variance is, should we not be able to present our case?

Kehrig: No, no, no, you, definitely, we would not make a decision without you presenting your case.

Opalewski: Ok.

Kehrig: I just, I like, to put the ground rules down so people realize that we are not granting you a variance, we are granting the parcel a variance. There is a big distinction, that's why I don't like to see things get personal. That's why all comments are supposed to be directed to the chair, and you take the personalities out of it. Cuz, I mean you, in this case you guys are awesome, but we have to, now we have to turn and look at the parcel, because that's what we are supposed to be doing is look at the parcel.

Opalewski: So, if the variance goes with the land, if someone came onto the property after we did, what if they don't want to run a kennel? And if they do, they still have to go through the special land use approval process with the planning commission, is that not correct?

Kehrig: No, that runs with the property.

Hicks: It runs with the property as well.

Goetzinger: So, they can run a kennel without.

Terenzi: We were given,

Opalewski: we were given.

Terenzi: the stipulation that we have to operate, so they would have to come in and do the exact same thing is what we were told.

Opalewski: during the planning commission meeting

Terenzi: if they want to do this type of business. That's what made it a special land use request.

Kehrig: All right, you

Goetzinger: The variance aspect

Terenzi: Because it's not falling into the kennel category and operate differently, so there's not really something that specializes to what we are doing so we put those.

Opalewski: Are special land use approval and variance approval the same thing?

Kehrig: No

Opalewski: in terms of what stays with the property and what that requires the next homeowner to do.

Kehrig: If they, the special land use they would have to, any conditions that were imposed, they would fall under those same conditions. That runs with the land, so they would have to, whoever bought your property, and it would be foolish of you not to market it as that it has a special land use, they would be limited to the 60 dogs, they would be limited to those hours, so yeah, that would stay with the parcel. But I, Madam Chair, I think they would like to present, I think it would be good to hear.

Hicks: Yeah, if you

Opalewski: Yeah,

Martin: Can you go up to the podium so later on I can hear your comments?

Opalewski: Yeah. I think it was challenging when doing the research, there really is no simple explanation of what constitutes a practical difficulty. So, we're doing our best with the evidence we have to satisfy the proof for our case to be granted variances, if, when you deliberate, we can talk about those things. We do respect the overall purpose and effectiveness of the zoning ordinance, but strict compliance with the width and setback requirements is restrictive, because we're requesting a small amount to continue using the property as we intend as it's currently zoned. We think that compliance becomes unreasonable when you look at other special land uses that exist that have little to no requirements or conditions. You're talking about 16:05 Automobile Heavy Repair Garage for example. There's no site lot width or side yard setbacks required to control noise, prevent fumes, or possibly smoke. We talk a lot about noise when we talk about

the kennel. 16:07 Bed and Breakfasts. There's no site lot width or side yard setbacks required to control noise, traffic or parking areas. 16:25 Junk Yards, Auto Wrecking Yards, and Storage of Industrial Wastes: the minimum site size for that is 2 and ½ acres. Aside from the fact that we're satisfying a unique need in our neighborhood, the physical characteristic of our property, that makes it difficult to comply with the dimensional requirements, is that it is exceptionally narrow. The small distance from one side to the other, especially in comparison with the length, and then our pond sits directly in the middle of the property. We aren't responsible for where the existing structures were built, nor is it the previous owner's responsibility. We didn't create the hardship of our lot being too narrow, or the buffer requirement being too large. We configured the business as best as we can right now, but in our case, again, not only is complying with this zoning ordinance impossible, but it is unworkable. And the cost won't justify moving an already existing structure or destroying and demolishing attractive features on the property to make it work. DJ, you saw the other barn that exists on our property when you were there this afternoon. And we do think that it's a reasonable request that could be granted to other property owners in a similar situation. Our variance will not be a substantial detriment to the adjacent property, and then again, I point to the property owner who would be impacted the most, she submitted an email expressing her approval for the variance. Also, one of the recognized purposes for this side yard setback is to provide access for safety personnel, we have to consider public safety, public welfare that access will not be eliminated. And again, the variances will not alter the essential character of the neighborhood in which our property is located. We're providing a much-needed service to our community. Thank you for allowing me to express that.

Kehrig: Actually, I have a definition of practical difficulty kind of.

Hicks: How did I know you would have that?

Kehrig: (referencing MSU Extension – Administering Township Zoning) Michigan Court of Appeals has applied these principles: in order to obtain a dimensional variance which is what you need, a dimensional variance, you are correct that you have to show a practical difficulty by demonstrating, a) whether the strict compliance with area setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or render conformity unnecessarily burdensome, and b) whether a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others. And then c) is whether the plight of the owner is due to unique circumstances of the property and d) whether the problem was self-created. So that's, when I look at these, I always look for something very unique, and I think that's where this property looks like all the other properties in the township. It's not an irregular shape, or weird topography, it does have a very nice greenbelt, I saw all the way around the west side and the back, and they did put up a nice privacy fence and the nice thing is it's set way back from the road, which is very nice but it's, it's not, you know, what I would consider a unique parcel.

Hicks: No. It looks a lot like mine, only, it's twice as deep.

Opalewski: I did try contacting the township to find out if there was any special land use that came with the property prior to us purchasing it. We wouldn't have known to look for something like that at the time. But the mini horse rescue that existed there, that was able to operate. How does that work?

Kehrig: The horses are a slightly different ordinance, and like I said the, the keeping of horses is addressed, on a parcel of two acres or more, and one additional acre for each animal after the first, so they probably were operating, and that is a permitted use in the AG district where the kennel is a special land use. So, it's livestock and horses and other types of animals are permitted uses and much easier to do in that area. So that's how that probably happened.

Opalewski: Easier to do?

Kehrig: Much, much easier because it's a permitted use versus special land use.

Opalewski: I thought you meant that taking care of.

Kehrig: No, I wouldn't say that horses are easy.

(general laughing)

Opalewski: Ok just clarifying.

Terenzi: Well and then you asked about the ordinance and it's a big ask, so my question to you is, what do you think 147 feet would do? Honestly, if it was right where it needed to be, and you approved somebody that had all these checked off, and they're a back-yard breeder, or a puppy mill, or a hunter, or what have you. If you have misbehaving dogs, which you heard somebody comment on the virtual end of things, and we hear the same dog that they're talking about, and I hear all of the other dogs around us as well. What, what would that really do? Because then you're getting into unrealistic numbers in my opinion, as someone that's been in this industry for quite a long time. So, even if it was 500 feet, my question to you is, do you think that would prevent noise from carrying, when we can hear a dog a mile down the road, that goes all the time for that matter? And yet, ours do not, unless it's like a "oh," like they're excited to run out as you said when they play, but it's not constant, so what, with our play yard makes it different than a dog run, as the ordinance says, is also like somebody have in a back yard. Somebody can put up an invisible fence right up to anybody's property lines, and a dog can stand there and bark, or what have you. Why, why is this, you know, distance really realistic?

Kehrig: It's not a perfect ordinance (inaudible).

Terenzi: That's why I am saying, so when you're asking us, though to try and consider potentially rewriting it, or you know adding ones that make more sense to specific businesses, specialty things that aren't just gonna be as simple as in and out, you know, structure for any animal, but specifically dogs, what, what of that do you honestly think is a good distance?

Kehrig: It's not unrealistic. Ray Township commercial kennels require 350 feet from the center of the road setback, 200 feet side and rear property lines, minimum of 10 acres. And then Berlin has 10 acres as well, but they have 100 feet from their abutting property lines. So, theirs is lesser but Ray's is greater, we're kind of right in the middle.

Terenzi: Right, but do you think either which way any of those numbers really make a difference to the (inaudible) is allowed to?

Kehrig: No, I live a mile from one of the Cider Mills so, and I can hear it, so, you know, noise carries.

Opalewski: So, I would ask that when you are deliberating to think about setting a precedent and look at it from a different perspective. You're talking about people coming in and trying to get variances for who knows what, but what happens when people stop coming in to try to get variances because you're not willing to take a look at it from a different perspective? We are adding a much-needed service to the community. The variances that we're asking for would allow us to keep running our business as we have been, in an area where that use is permitted. If you don't approve those variances and we leave, what precedent are you setting then?

Xagoraris: Well, I don't think that we, both approve and disapprove, we go both ways, probably, I don't know about 50/50 but we've turned down some pretty compelling arguments such as the person that had to take off the front entryway because they built it too close to the road, and they had to take it off the front of their house.-

Hicks: I went home and cried that night -

Xagoraris: I felt terrible.

Hicks: - because I felt so bad for that couple. But we had to say no because legally we had no way to do it. And it is not up to us to decide that the ordinance is no good. We don't write the ordinances, that's the planning commission's job. (inaudible)

Xagoraris: In a lot of ways, we operate like a judge does. Which means that we interpret the laws as they are written. And, your arguments, you know, are valid, and we do have some wiggle room, but that's why they have a criteria we follow, but in the end, we have to follow what the law is, no matter how much we might personally sympathize with, you know, someone who has brought a petition.

Kehrig: To answer the question specifically, the last two businesses that we granted dimensional variances, were an 18 ft, a 20 ft, and a 6-foot side rear variance, and then a 18 ½ foot side yard set-back. And that was, in the last case was an irregular shaped industrial parcel.

Hicks: Yeah, that lot was weird.

Kehrig: So, and that's, you know and this – to give relief for situations where there's unique circumstances, but, so we do grant variances when they're called for and we can justify, and we have to justify the variance, just like we have to justify that, to deny the variance, too. We have to have, we have to follow the rules and state our reasons why we're going one way or the other.

Terenzi: Sure, and that's for the people that want to go through the process the right way and step up to, you know, obviously, provide their end of things and discuss it because they're trying to comply, and just can't, and others just don't.

Kehrig: That property, you would have a difficult time, even under, even if the ordinance was written at 100 feet, it would still, you could have a 75-foot run down the middle, you know, but it's just, it doesn't even work on your property then because of your pond and things. But, you're just very close to the property line, it's, it's, it's, 147 feet is a huge, huge variance.

Hicks: Yeah, that's a lot. Jim, Jim? Jim one, Jim two?

Goetzinger: I think I've said my peace.

Moegle: Nope, I'm all set.

Hicks: Ok

Goetzinger: Being new to this board, I don't know how the motions typically go. Is it similar to the township board? Do we make a motion, or how, how does this go?

Kehrig: Well, we have, we have to specifically state our reasons for granting or denying.

Hicks: Our reasons for a yea or a nay, yeah. And that's, are we, is everyone, are you satisfied with the information that we've, do you have any more questions or anything? I think we're, if we are through deliberating, we can proceed to

Kehrig: to a motion?

Hicks: Yes.

Kehrig: Well, I know where my motion would probably, I don't, ok, we have to prove that they've met, and it's the burden of proof for them to prove that they've

Hicks: Right

Kehrig: That they have practical difficulty and the hardship in using that parcel. The only thing it would do a substantial justice to other property, or it's not even property owners, though.

Goetzinger: other kennel types, which we haven't had other requests for that right?

Kehrig: and it does set precedent for any other kennels that would come in, with that big a variance. Ok well, look at standards,

Opalewski: You know it's interesting. You talk about setting a precedent for other kennels, but in the same breath, you're talking about looking to us for our expertise if you decide to rewrite the ordinance. (inaudible)

Kehrig: no, it's not you, it's the parcel. There's no doubt that you're running a first-class business. There's without a doubt. Like I say, if I could vote to give it to you and you could take it where you want, because I know you do a great job, but, to put it on this parcel and say that from here on out, that this can be a commercial dog kennel with 60 dogs, I would have a hard time with that. I would, I mean, I just can't justify it by the conditions.

Unidentified audience member: Is it the number of dogs?

Hicks: No, it's the, it's the amount of, it's the amount that this property is out of compliance. It's not them, it's not their business. I've heard nothing but marvelous things about both of these ladies and the business they operate, but the parcel just can't be made to fit.

Unidentified audience member: It sounds like the planning commission needs to address it, to determine if these setbacks are realistic.

Hicks: Well, and that's something that can go forward with the planning commission, but we can't do that here. And we can't say the planning commission should fix this, so we're gonna give you a variance. We can't do that. We have to say just, right now, in this moment in time, does this parcel meet the criteria for variances, and I have to say, I don't think it does. It's not, the parcel itself, and again, it's not you personally, it's your land. Your land is not unique enough to all of the other parcels around it. It's, even if you know,

sometimes if it's a weird pie shaped lot, and you need to build your barn closer to the lot line than our ordinance allows, we let people do that because otherwise they couldn't have a barn. This is,

Unidentified audience member: So there's no grandfathering consideration here? I mean the buildings were there.

Hicks: No, that's true but as we pointed out, even if they move the buildings, they would have a hard time, the lot is just too narrow. Now, if the planning commission changes the ordinance and reduces those required setbacks, the side yard or rear setbacks, what, well side, the front you're fine, and it looks like the back you're fine, it's those sides that are the problem. If that were to change in the future, then this parcel might be in compliance, or might be close enough to compliance that we could say, ok you know, if the 18 feet, I'm all right with an 18-foot setback, but 147 feet is as wide as some lots, that's a lot. And that's why we're having a really hard time.

Xagoraris: In essence it's the width of the entire parcel.

Hicks: the width of your parcel is, yeah.

Xagoraris: Well, one half the width.

Opalewski: Is the planning commission also the, are they also responsible for determining where special land uses are permitted? Because its, we have 28 parcels that exist on Bordman, and of them, five of them might be able to comply with the special land uses that exist. So. How do you determine, how do you decide we're going to allow you to, we'll permit you to run your business here, but I'm sorry we can't change the Zoning laws for you. It's very confusing.

Kehrig: The, yeah, I mean -

Hicks: You can probably answer the planning commission question better, DJ chairs the, as you know, chairs the planning commission.

Opalewski: Right

Kehrig: The site plan, you know if it meets the ordinance, it's a slam dunk, I mean. The special land use, it's always going to have a public hearing, and then we have to make sure that there are specific procedures for a special land use to make sure that the spirit of the ordinance is being upheld, and that we're doing due justice to the township and, you know there's requirements just like this zoning board. There's five requirements that have to be met and the second one is that the conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district.

Hicks: That's a sticker, right there.

Kehrig: Yeah, the uniqueness of the property.

Opalewski: Right, right but my question is just when you're determining where to permit these special land uses, would it, would it be -

Goetzinger: That's an entire district, as far as the special land uses

Opalewski: - Right but when you permit them in an area where only five of 28 parcels on a road are able to comply.

Goetzinger: This is the whole township though, not just the one road.

Opalewski: I understand that, but what I'm saying is that all of those special land uses, of which there are 14, if every property owner on Bordman wanted to come forward to apply for special land use for something, they would be very restricted by those very narrow lots. Seven of which are in a row. So I'm just trying to wrap my head around why special land uses are permitted in an area where people cannot comply with them because the parcels are so narrow

Kehrig: That's to protect all property owners, if the lots are too narrow then these uses are not a good fit for that area, just to protect everybody's property rights. If you're on a narrow lot, you don't expect to see a more intense use. If you're on a wide-open parcel, then you've got more leeway to do more things. But that's by design in the Zoning ordinances to create protection for all the landowners that certain uses are not compatible with small lots.

Opalewski: It definitely sounds like something that needs to be addressed.

Kehrig: And we work on the Zoning ordinances all the time. This, I'm sure will cause a conversation at the zoning, at the planning commission to, to look at it again. And, but I mean, I just told you that Ray and

Berlin are above and below, Ray's is stricter, and Berlin's is a little more lax, but it's not like we are way out in left field or something, its. But the ordinances

Opalewski: But we chose this area for a specific reason, that's all. We looked in Berlin, we looked in Ray Township. You know.

Kehrig: Right. But you know the fact that this property is not unique, and it's very similar to other properties in the same Zoning district, and I feel that we'd be, you know, the fourth regulation is that we're not conferring special privileges that are denied other properties similarly situated in the same Zoning district and that's where we get into the precedent. I mean I feel like this would be a special privilege to give someone that large of a variance, and the next person will say well, you know. The fact that the property is not unique, it's similar to all the other properties, and that I think that we will be conferring special privileges, my motion would be to deny the dimensional variances based on those two reasons.

Xagoraris: What happened is when you became special use-

Goetzinger: I second that.

Xagoraris: -you became unique because you want to have a kennel on it, but you're no different than the people on both sides when they cut those long, strip 10-acre parcels and sold them, God only knows how long ago, and that's what makes you unique, but that, we can't count that-

Hicks: It's the land that has to be unique, not you, you're unique, your business is unique -

Xagoraris: -because it's the land. You're unique, sounds like you've got a great business.

Hicks: yeah, It's the parcel that has to be unique.

Opalewski: I understand that. (inaudible) it's the ordinance, the special land use, the law, the way it's all set up is just very insufficient (inaudible).

Hicks: Are you crafting a motion, or was that just?

Kehrig: yes, I'm just, discussion, I'm writing it down so I can read it back

Hicks: That's what I thought

Goetzinger: Maybe I seconded too soon.

Kehrig: Yeah, Jim seconded so we could have discussion.

Hicks: We have a motion; we have a second. He's going to craft the motion so it can be read
(Multiple people talking)

Hicks: Yes, read it for Cris

Kehrig: It's basically B and D. **Motion** to deny the dimensional variances based on the fact that the property, there are no unique circumstances of this property, and it would confer special privileges denied other properties in the same zoning district. Basically, our rule B and D of our requirements.

Opalewski: I didn't take notice in the ordinance, but is there any policy in place for the people who have to pay what they pay to come before you to present their case and then not be approved?

Kehrig: No, there's

Martin: Because the township incurs the costs regardless of whether it's approved or denied, there's the publishing fee, there's the mailing to all of the neighbors certified mail, that right there is the biggest portion of what it costs, and we cannot, we can't make the township pay for your request as a business.

Opalewski: I understand.

Unidentified audience member: Can you reread the motion?

Kehrig: My motion is to deny the dimensional variances based on the fact that the property does not have unique circumstances and it would confer special privileges that are denied other properties in the same zoning district. And those are two of the five requirements that we have to meet, and those are the two biggest ones that they failed to meet.

Hicks: of our criteria. Yeah. Those are the biggies.

Opalewski: Can we also talk really quickly about the next steps so that the people who oppose our business being where it is don't harass us or the township if things don't go the way they think they should go now that you've made the decision not to approve the variances?

Kehrig: I don't think we can address the steps. At this point it becomes an enforcement on the township

Hicks: Yeah, that's, it sounds like it would become a legal matter which is not us.

Opalewski: Right, but, what is supposed to happen next? Now that you've denied the variances -

Hicks: We haven't yet, we just have a motion on the table

Opalewski: Well, ok, so then in the event that you do, what happens next?

Kehrig: I would imagine if I were you,

Goetzinger: the property needs to come into compliance

Kehrig: I would come to the planning commission and see if there is any, any thought of reworking the ordinance, but -

Goetzinger: I think to your question be more, the property needs to come into compliance.

Kehrig and Hicks: yeah

Goetzinger: but you're referring to ordinance enforcement.

Kehrig: Yeah, and that's the township.

Opalewski: then we'll address that then with the township.

Kehrig: Yeah.

Opalewski: (inaudible)

Hicks: You've got the motion, ok, so and we do have support, correct?

Goetzinger: Yes, I seconded

Hicks: Ok, so we've got the motion, and the support, do we have discussion?... Seeing none, let's roll call it.

Martin: Moegle **Aye**, Goetzinger **Aye**, Kehrig **Aye**, Hicks **Aye**, Xagoraris **Aye**; **Nays: None. Motion Carried.**

Hicks: Yes, it did.

Kehrig: These are the hard ones, because it's a good business.

Opalewski: Ok so that's a wrap?

Hicks: Yes, for that. We do have a public comment section available if there are any members of the public still present that would like to address the board, you can do that at this time, we ask again that you come to the podium, speak into the microphone and give us your name and your address for the record.

Unidentified audience member: I'm sorry, we can't hear you back here.

Hicks: Oh I'm sorry, I'm just saying that there is another opportunity at this time for the public to address the board, if you have any additional public comment, you can come to the podium, please, and give us your name and your address and make any additional comment you might like to make.

10. PUBLIC COMMENTS: None

11. ADJOURNMENT: **Motion** by Kehrig, second by Goetzinger, to close the meeting at 8:52 p.m. **All Ayes, Motion Carried.**

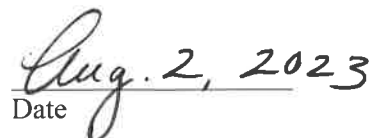
Respectfully submitted:

Cris Martin

Recording Secretary

Approved:


Gail Hicks, Chairperson


Date