

**ELK RAPIDS TOWNSHIP  
PLANNING COMMISSION**

Meeting Minutes – Thursday December 4, 2008

Chairwoman Mischel called the meeting to order at 6:30 PM at the Government Center, 315 Bridge Street.

The Chair welcomed the new member to the Planning Commission, Mr. Dorance Amos.

Present: Dorance Amos, Jean Derenzy, William Larson, Jim Lundy, Emile Sabty and Renee Mischel.

Absent: Shen Smith

Also Present: Leonard Harrett, Zoning Administrator, Larry Nix, Planning Consultant and audience of 5.

**Adoption of Agenda:** Agenda for 12-4-2008 meeting was adopted by consensus.

**Approval of Minutes:** M/S - Derenzy/Lundy. Minutes for 11-6-2008 meeting were approved unanimously.

**Public Forum:** None.

**Old Business:**

**Section 2.20 – Standards for Property Adjacent to US-31**

Mr. W. Streit, owner of property at 10443 S. Bayshore Dr., abutting US-31, distributed a memo (copy on file) then addressed the Commission stating that he owns the Twisted Fish Gallery at that location. The property is unique being of triangular shape wedged between US-31 and S. Bayshore Dr. The proposed 150-ft setback from the centerline of US-31 would encompass the entire Gallery Building, where now at 50-ft only a third of it is in the setback; that limits any future expansion possibilities. He objected to the proposed 150-ft setback and to having to go to the ZBA in the future for a variance, especially if the property changes hands and the ZBA change its members. He proposed that, if an expanded setback makes more than half of a given building nonconforming, the setback remain at the current point with respect to the current building; that building can then be expanded on the three sides away from US-31 and the property can maintain its value and usefulness. In the drafted text, different zoned properties received different relief rules, properties like mine should fall in that category where the 150-ft does not apply to it.

In response Mr. Nix stated that the property is unique, that normally he has to go to the ZBA for relief, but the drafted rules text exempt him from that. Mr. Harrett stated that the ZBA always give ~~relief~~ *consideration* for unique properties and seldom disregard the rules, the same will apply here. This property use, within reason, if continued under a different owner would not need special approvals, but if the use changes then permits and approvals would be required. A new owner putting up a new building would require a ZBA review, but being unique, and with the rights of use, the ZBA usually give special considerations in favor of approval. The ZBA guidelines are seldom changed, they are governed by statute.

An email message received by a member in the audience was distributed indicating objection, but was vague on particulars and specifics.

Other thoughts expressed during the discussion were. The drafted text as developed is adequate and should be approved. The Advisory Committee completed its work back in February, and is not empowered any more and should not be included in these discussions. If we do not approve this suggested amendment as written, then we should drop it and continue to approach the subject like we have done in the past. This is a good amendment and the 150-ft setback is reasonable and should be kept as proposed and approved. We were asked by the Township Board to take another look at this using an Advisory Committee, which was done; we studied their recommendation then formed the current amendment text, we should approve it and recommend it back to the Township Board for finality.

To the inquiry as to the source of the 150-ft figure, the Chair responded that in the original 1995 US-31 Corridor Study a setback of 500-ft was recommended, which was considered excessive by the Planning Commission; a 150-ft setback was adopted and was used from there on to apply to new developments along the Corridor. Mr. Lundy added that all the new developments along the Corridor have abided by the 150-ft unwritten rule without any questions. Mr. Harrett stated that in the Master Plan Chapter 4 on Transportation, does encourage developments to have wider setbacks and buffering requirements along highways in rural areas without a set figure.

Ms. Derenzy stated that the Advisory Committee was formed to reconcile the interests of the current property owners and our intent to retain the rural character of the Township and to recommend a plan that meets the objectives of these points. What is happening? In response the Chair stated that in February 2008 the Advisory Committee Chairman, Mr. Sanderson, submitted a group written formal report. Then he went on to present his personal conclusions summary. The Planning Commissions took the report and merged it with the proposed text, but upon review decided to stay with the uniform 150-ft setback. With this setback, generous concessions were applied to any existing affected properties.

The Chair then asked the Planning Consultant for his observations, review and suggested actions on this item. Mr. Nix made a detailed review statement. This item he said, involves trying to resolve zoning issues in a small community. The 150-ft rule when suggested, has worked for a very long time. The effort to formalize it started in April 2006. When public hearings were planned, we received very little public input. The issues raised then by the two people attending the public hearing were resolved. Then we moved on to the County with the adjusted text where there was more community input created, and eventually prompting the Township Board to not approve the amendment as written. It is appropriate not to create rules that are punitive. We always have to go back to the intent and purpose when developing rules. Mr. Lundy earlier said, why bother, we have been kind of doing the rule anyway, and doing it by just persuading people. However, today persuading people seeking developments is becoming more limited. They look at what is in the rule book and if it says 50-ft they follow it; and that is the only thing we can legally mandate them to do. Even when we try to persuade them that they push back, legally we are out of line, though most times the 150-ft has worked through persuasion.

The Advisory Committee suggested 110-ft, when the long standing idea here was 150-ft. Then we tried to create a central point to measure from, which we chose the Centerline of the ROW, because of the many varying ROWs along the Corridor ranging from 33'-110'. The notion is that some people would actually gain while those with a short ROW would be giving up more. Over the last two decades, almost 6 new buildings were built along the Corridor, which does not create much pressure. Now more attention is developing. Just recently a large drug store chain wanted to locate in the Village, which gives thought that others may want to locate in this area. When these types of retailers start coming here they look at the rules and do every thing they can to comply with those rules, whatever they are. If the rule is 150-ft, that's what they comply with. We can persuade them to a certain degree, depending on the leverage we have in that negotiation process. So what should we do? We tried to invoke a standard that the Planning Commission has already held and used, which is 150-ft. In looking at what the Advisory Committee did, 110', 125' or 50', whichever is the greatest, it creates a bouncing ball effect. Some people would be at 160-ft while others at 83-ft and in between; with the 150-ft we tried to create a compromise. In reading their report, there were concerns about going back to the ZBA and how they might decide in time. That variable was taken out of the mix as well as non frontal expansion, fire and catastrophic destruction of property where they can rebuild without going to the ZBA. That was a huge compromise made by the Planning Commission to create a level of playing field in this whole situation and try to maintain a Corridor. Creating a scenic openness is really the Planning Commission objective that we are trying to achieve. Given that we have some property owners, and given that we have a lot of respect to property owners in this community; because we don't have a lot of them, and when some of them makes noise, we listen, which is different from a very large community when only a few are outspoken, but don't hinder approval. We don't do that here, neither the Planning Commission nor the Township Board especially in this issue, there is too much involved in the community along that Corridor.

A suggestion is that we could do nothing for a while, we just take the existing setback and leave it at 50-ft, which would be a variable setback. We know MDOT does not have any plans right now to expand US-31 in Antrim County or even South towards Grand Traverse County, for the traffic does not warrant it. In the event we get a

big box or some significant retailer wanting to come up here, that in plan may change. The only reason I would suggest to you that, we would want put thru finding a common ground, whether it is a 110-ft or 125-ft or something less than 150-ft, is to look forward for future planning if that commercial push does get here as was tried in the Village. If they come here in the next 10-20 years, we have to look beyond this window of existing ROW ugliness we are at now, and looking forward is what we are trying to do with the 150-ft. Currently we have things that come and go, here and there, that are closer to the roadway, in time all of a sudden this Corridor can look much different from what we have envisioned with the side to side of 300-ft of openness and spaciousness when coming into our community, as opposed to other locations where you can start pushing closer to the road and the road gets expanded. With MDOT if they don't have to they would not buy ROWs because everybody would want their market value. They understand that, but if they can take a two lane road and create a five lane road out of the existing ROWs, that's what they will do. It is hard to get a five lane road in 66 feet, which we have in some spots of the Corridor against where we have wider ROWs of 75 & 75 feet or more. They will work with what they have, they don't go out and create a uniform ROW line and buy property. What we end up with, if they don't buy more ROWs, and if that business is only 50-ft back from what is existing, it could become really close to the road. That is why we selected the Centerline of the ROW as a uniform point of measurement for the 150-ft setback. If we maintain our current position of 50-ft from the ROW we can't change that today to create uniformity because the ROW is not uniform, and it does not work that way.

Another suggestion would be to continue to work on this, and if we do what I might suggest is we take the US-31 Corridor map and blow it up into a bigger size that will give a large view of the Corridor and its details which would assist in making a different visual review of this study. It would tell a different story, we can then see what it means for different setback lines.

The Chair thanked Mr. Nix for the detailed review, and then stated that this has been a tough topic to bring to any formal conclusion, and what we do at this Commission we should do correctly. Then The Chair asked if there were further comments.

Mr. Larson stated, saying; I don't think you are going to satisfy everybody, it never happens. I do think the 150-ft is a good one, I felt that at the start and I still feel that now. Mr. Nix has a point that should be explored. Sitting here as a Planning Commission trying to please every property owner in that Corridor is not going to happen, we have to realize this. I think we should do the best we can, currently we are working with the 150-ft, I think that it is ~~almost~~ *foremost* in our mind. If there are other details that ought to be taken care of, then may be there is something in that area that has to be done. After 2 ½ years of working on this, we should do something to bring it to a conclusion. We should not just say dump it, just because some person or two or three do not agree with it and drop it. If that was the case then there is no need for having a Planning Commission.

The Chair stated that taking Mr. Nix suggestion and table this item, is in actuality a sort of what we might need to do, we would roll it into the entire future planning, which is an item on the agenda, and then we look at it with some of the other items that go along with this. It might help when viewing it with the rest of the big picture. At this point the discussion of this item was ended.

#### Group Retreat

Mr. Sabty apprised the Commission on the status of the amendments in process

- Special Exception – Was approved by the Township Board as amendment 2008-03 and became effective 11-27-2008.
- Group Retreat – Was approved by the County 12-2-2008. A County memo to the Township would put it on their 12-9-2008 meeting agenda as Amendment 2008-04. If approved and noticed in time, the expected effective date is 12-25-2008.

Mr. Clark made a slide presentation on the Pine Hollow property concept zoning and their proposed application for rezoning and Group Retreat application. The points made were:

- The land survey conducted found a section of a structure serving the Tennis Courts sitting less than 30' from the South lot line. This could be remedied by amending the Ordinance to add new language.
- The existing R-3 half of the property to be rezoned into R-1.

- Property on the East side of S. Bayshore Dr. owned by the applicant to be rezoned from R-2 to R-3.
- The three requests go in tandem; application approval is done pending the rezoning approvals.

After discussion, to alleviate the structure location into the side yard setback, a suggestion was made that, "at this stage it would be better all around to leave the text as is. When an official application is made with a site plan, the under 30' discrepancy is brought up. Since no changes are contemplated, the Planning Commission may approve the site plan with reference to the discrepancy that it be continued as existing with no use or expansion changes."

As to rezoning of R-3 to R-1 property between South Bayshore Drive and the East side of the Bay, Mr. Sabty stated that this property sits between approximately 10 other neighboring properties where a North-South line forms R3 and R-1 zones. To rezone the Pine Hollow property alone would constitute Strip Zoning. A rezoning change would have to include all R-3 properties. During 1990 this was tried by the Pine Hollow/Merskin property alone to rezone R-1 to R-3 and then by the neighboring properties alone to rezone from R-3 to R-1. In both cases it was declared Spot Zoning and the requests were denied. When the request comes to the Planning Commission a combination rezoning of all the affected properties should be done then.

Discussed was the would be applicant intent when making three cohesive applications in the same process, and not wanting to loose any of the basic elements involved if the process is not successful for all three parts. If one or the other is not approved the whole package stays as is. It was realized that the three parts will not move together, the Retreat Special Exception is handled at the Planning Commission level while rezoning goes through the process of Planning Commission, County and Township. It was noted that the R-2 to R-3 rezoning would be a new R-3 zoned area replacing the lost R-3 to R-1 rezoned area.

It was suggested to Mr. Clark that it might be advantageous to go through an informal Sketch Review prior to a formal Site Plan Review. This would help resolve any misunderstanding or discrepancy in the Site Plan and the request prior to a formal hearing. At the same time it was suggested that the applicant apprize their neighbors of the Group Retreat project to create a common understanding prior to a public hearing.

M/S – Mischel/Lundy. Move that when a formal application is made to rezone the current Pine Hollow property from R-3 to R-1, that the Planning Commission Secretary include into the Public Hearing Notice all the existing neighboring R-3 properties for change to R-1 all at the same hearing. **Approved 6-0-0**.

#### Change Planning Commission Meeting Days

It was brought up that moving the meeting days from the later part of the week to the front end of the week would be more convenient for some members work schedule. Upon review of the Planning Consultant open days and in concurrence with the member's availability, the Planning Commission by determination selected the third Tuesday of the month to be the official meeting day. The schedule will be changed, and Bulletin Board Notice will go up.

As there was no further pertinent discussions Chairwoman Mischel adjourned the meeting at 8:55 PM.

The next scheduled meeting will be on Tuesday January 20, 2009 at 6:30 PM at the Government Center, 315 Bridge Street.

E. S. Sabty, Secretary  
12-4-2008

**Minutes Approved 1-20-2009**

Minutes are subject to approval at the next regular Planning Commission Meeting.