

AGENDA

DAVISON TOWNSHIP ZONING BOARD OF APPEALS

DATE: TUESDAY, August 9, 2016

TIME: 7:00 p.m.

- I. PREVIOUS MINUTES
- II. OLD BUSINESS
 - A. Case # 16-V-2016-4 – Erik Taipalus
1059 N Cummings Rd - A variance to construct an accessory building in the front yard.
(per Section 1705.3)
- III. NEW BUSINESS
- IV. PUBLIC COMMENT
- V. ADJOURN

**DAVISON TOWNSHIP
ZBA REGULAR MEETING
July 12, 2016**

MEMBERS PRESENT: Chairman John Jelinek, Vice Chair Carol Hagler, Richard Hill, Keith Garman, Pat Miller

Attorney Michael Joliat

Building/Planning Admin. Assistant Charm Healy

Building/Planning Coordinator Jeremy Smith

MEMBERS ABSENT: Secretary Dale Green and Nancy Davis

OTHERS PRESENT: Jennifer, Kevin and Jake McAuliffe, Rob Malcomnson, Erik Taipalus

CALL TO ORDER

The regular meeting of the Davison Township Zoning Board of Appeals was called to order at 7:00 p.m. at the Davison Township Municipal Building, 1280 N. Irish Road, Davison, MI 48423.

PREVIOUS MINUTES

MOTION BY HILL, SUPPORT BY HAGLER to approve the June 14, 2016 regular meeting minutes as presented. Motion carried unanimously.

UNFINISHED BUSINESS

None

NEW BUSINESS

Case #16-V-2016-4 – Erik Taipalus 1059 N. Cummings Road

Mr. Jelinek opened the case by stating the Zoning Ordinance rules and regulations. He stated that Erik Taipalus is requesting a variance to construct an accessory building in the front yard.

The Building/Planning Administration stated that the board had a quorum, however 2/3 of the board would have to vote to approve and the applicant cannot reapply for the variance. The applicant can chose to table the request and reschedule for the next regular meeting.

Mr. Taipalus requested the variance be rescheduled for the next regular meeting.

Mr. Jelinek stated that Case #16-V-2016-4 will be rescheduled for August 9, 2016 at 7 p.m. and all posting have been noted.

Case #16-V-2016-5 – Kevin McAuliffe – 11224 Davison Road

The Building/Planning Administration offered the same rescheduling request to Mr. McAuliffe, he declined and said he would like to be heard tonight.

**DAVISON TOWNSHIP
ZBA REGULAR MEETING
July 12, 2016**

Kevin McAuliffe gave a brief explanation as to why he needs his variance, due to disability, extra storage for larger family and a garage for his vehicle maintenance.

Jeremy gave the Administrative report in support of the variance based on the hardship of his disability occurring from an accident and the extra height in the building so he can stand under a lift in order to work on his own vehicles, and the variance requested meets the spirit and intent of the Zoning Ordinance.

There was discussion about the roof pitch and style. Also will the existing barn be removed, the applicant stated yes and if any commercial maintenance would take place, the applicant stated no.

MOTION BY HILL, SUPPORT BY HAGLER to approve Case #16-V-2016-5 variance for an accessory building based on the Administration recommendations as presented. Motion carried unanimously.

PUBLIC COMMENT

The public comment period was opened at 7:14 p.m. and there were no comments. The public comment period was closed at 7:14 p.m.

INFORMATIONAL ITEMS

The Planning Commission meeting has been scheduled for July 20, 2016 and the Zoning Ordinance changes are on the agenda.

ADJOURNMENT

MOTION BY HILL, SUPPORT BY HAGLER to adjourn at 7:15 p.m. Motion carried unanimously.

Dale Green, Secretary



DAVISON TOWNSHIP

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CINDY K. SHIELDS, Clerk

KAREN M. MILLER, Supervisor

PATRICK R. MILLER, Treasurer

TIMOTHY W. ELKINS, Trustee

MATTHEW D. KARR, Trustee

June 27, 2016

Administrative Review
Erik Taipalus
1059 N Cummings Rd.
Variance Request
Case# 16-V-2016-4

REQUESTED VARIANCES:

1) A variance to construct an accessory building in the front yard. (Section 1705.3)

FACTS:

Mr. Taipalus's property is located at 1059 N Cummings Rd. The property is 2.17 acres, which is approximately 203 feet wide and 466 feet deep. The property is zoned RU-1 (Residential Urban-Single Family). The property is also surrounded by RU-1 zoning.

Mr. Taipalus is proposing to build a 12ft by 16ft (192 sq. ft.) accessory building in the front yard. Due to the interpretation of the zoning ordinance dated January 18, 2005, Mr. Taipalus is not allowed to construct an accessory building in the front yard. All accessory building must be placed in the rear yard and must be beyond the rear plane of the primary residence.

HARDSHIP/PRACTICAL DIFFICULTY:

Mr. Taipalus's hardship is that the placement of the accessory building must be in the front yard due to the contours of the land and that the rear yard floods.

RECOMMENDATIONS:

The building department would support recommendations for approval based on the following reasons:

1. The applicant did not create this problem, they are impeded by the topography of the parcel.
2. The applicant has proven a hardship by evidence of the natural contours of the property.

Respectfully,



Jeremy Smith
Building/Planning Coordinator

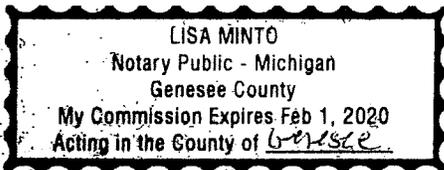
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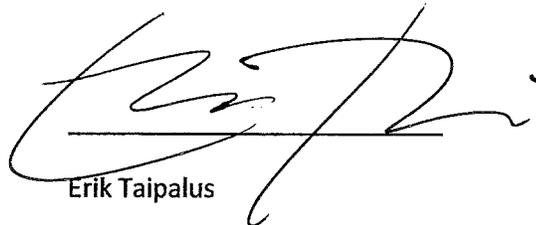
State of Michigan

County of Genesee

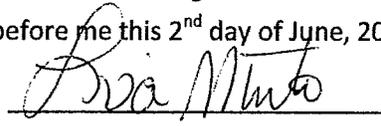
I, Erik Taipalus, being duly sworn, depose and say the following to be true and accurate:

- A. The strict enforcement of the Davison Township zoning restriction prohibiting an accessory building to be built in the front yard of a residence would deprive me of the ability to build a utility shed on an area of my property that offers firm and stable ground suitable to support a quality structure long term. My property consistently slopes away from the house on all sides creating significant challenges of building on a slope, and though the back yard is flat, it sits only a few inches above the water table in the surrounding wetland and is consistently soft and unstable for most of the year. Only one area of the front yard, as illustrated in attached sketches, offers a flat, dry and stable building surface.
- B. The contours of this property existed before I purchased the property and have not been altered by me.
- C. I did not create the adverse property conditions and placing a utility shed anywhere on the property beside the flat area of the front yard would deprive me of the rights of convenient, safe and year-round access that other property owners in my area enjoy with regard to their accessory buildings.
- D. Granting this variance request will not confer upon me any special privilege that is denied by the Ordinance to other lands, structures. or buildings in the same district.
- E. This variance is not being sought due to any possible existence of non-conforming uses of land, structures, or buildings in the same district, and I understand that any possible existence of the above shall not be considered grounds for the issuance of a variance.
- F. The utility shed for which the variance is being sought is the minimum reasonable size that will allow for its intended usage, and its proposed location has been selected in order to minimize the aesthetic impact of the structure on the property.
- G. This variance, if granted, shall be in harmony with the intent of the ordinance and will not be injurious to the environment, neighborhood, or otherwise detrimental to the public interest. This is evident by the fact that the planned structure shall be properly and soundly built, and the appropriate finishes utilized to match the architecturally attractive form and appearance of the home on the property, as well as uphold the high appearance standards of all nearby properties.




Erik Taipalus

Subscribed and sworn before me this 2nd day of June, 2016


Lisa Minto

Notary Public

Genesee County, Michigan

My commission expires 02/01/20

DAVISON TOWNSHIP ZONING BOARD OF APPEALS

January 18, 2005

Hamilton stated that in his opinion it is the duty of the Planning Commission to interpret the language of the ordinance. Attorney Hamilton explained that he states in his letter that if the Planning Commission reads the language in such a manner as to limit the placement of accessory structures to the back yard, in the backyard only. You would then review this as a regular request for a variance because this request clearly puts the structure in the side yard. If the language is read that the ordinance does permit accessory structures in side yards and it only has the effect of limiting the size of accessory structures in the rear yard then there is no need for the variance because it is a permitted structure.

Randy Stewart went on to explain what a required rear yard is. The required rear yard is the amount of setback which is needed per that zoning district. In example, RU-1 requires a minimum rear setback of 35 feet. Mr. Stewart stated that anything from the rear plane of the house to the side property line is considered side yard.

Mr. Hamilton stated that there is no specific language in the ordinance which states accessory buildings shall not occupy the side yard. The only language that the ordinance contains is that accessory buildings shall not occupy more than twenty five (25) percent of a required yard, plus forty (40) percent of any non-required rear yard.

Mr. Jelinek stated that this is a very large parcel and normally a parcel would be too narrow.

Pat Miller stated another scenario would be that the owner built his house in the very back of their property still maintaining their 35 foot setback

Mr. Stewart explained that the owner could attach a garage to his home or have an unattached garage in his side yard because one garage is allowed. An unattached garage is not considered an accessory structure.

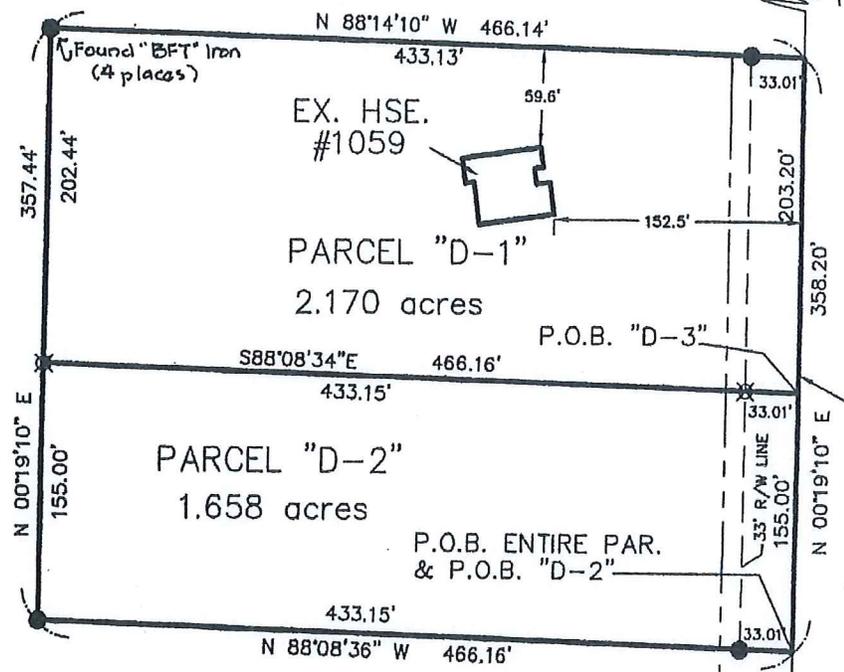
Attorney Hamilton stated that the Planning Commission needs to pass a resolution that this section of the ordinance means that accessory structures are limited to the rear yards.

Dale Green questioned if it is interpreted the structure can be placed in a side yard there would be no limitation of how large it could be.

Attorney Hamilton stated that there is no limitation on the size in this part of the ordinance.

MOTION BY PAT MILLER, SUPPORT BY CAROL HAGLER that we interpret this ordinance as limiting accessory structures to be located only in the required rear yard and it must be beyond the rear plane of the primary residence. Motion carried.

CENTER OF SEC.
SEC. 11
T.7N.,R.8E.
DAVISON TWP.
GENESEE CO.



SCALE: 1"=100'

FND. 3" DIA. BRASS DISC
MARKED "REMON GENESEE CO."
SOUTH 1/4 COR.
SEC. 11
T.7N.,R.8E.
DAVISON TWP.
GENESEE CO.

S 00°19'10" W 2832.86' (TOTAL)
CUMMINGS ROAD-66' R/W
NORTH-SOUTH 1/4 LINE, SEC. 11
BEARINGS ARE REFERENCED TO THIS LINE
PER SURVEY BY ROBERT L. HAGAN FOR "CHESTNUT CREEK FARMS"
(S 00°19'10" W)

Copyright, © B.F. THOMPSON, P.C.

NTS= Not to Scale (R)=Recorded (M)=Measured (C)=Calculated ●=Found Iron ☒=Set Iron *-*=Fence

TAX I.D. #05-11-300-011

CERTIFIED EXCLUSIVELY TO: MR. BRIAN McHUGH Closure error: 1/67,532

LOCATION: SW 1/4, SEC., 11, T.7N.,R.8E., GENESEE CO.

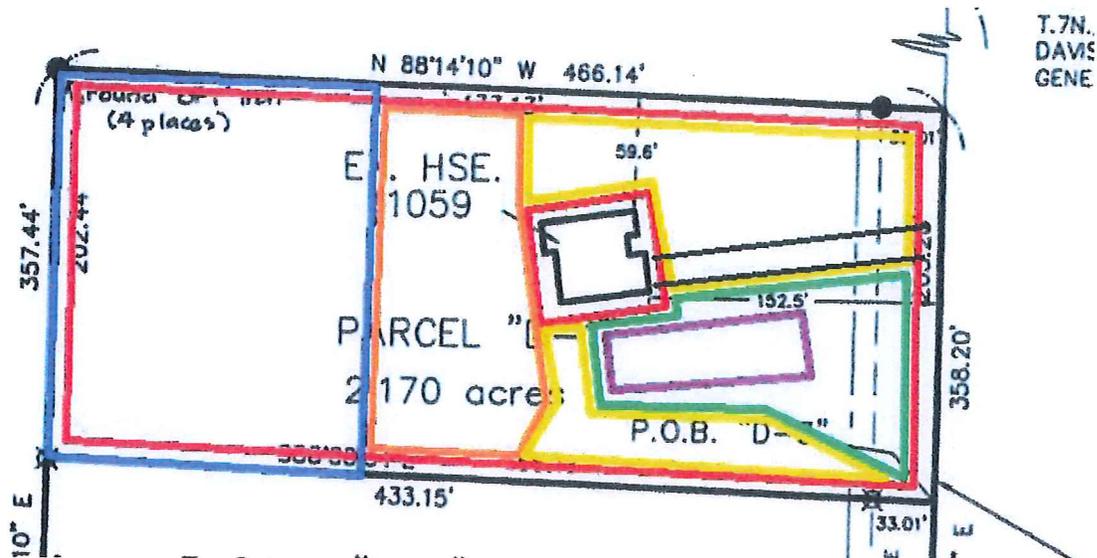
SCALE: 1"=100' DATE: 11-25-02 BY: WHR JOB# 02-3212 SH. 1 of 2

I hereby certify that this survey was prepared by me, or under my direct supervision, and that all of the requirements of P.A. 132, 1970 have been complied with.



When recorded return to:
B.F. Thompson, P.C.

Brad F. Thompson
Brad F. Thompson, P.E., S.#23828



In the sketch above, the following colors denote various features:

RED – This represents the 10' standoff from the house and property lines in which nothing can be built.

BLUE – This area comprising approximately 1/3 of the rear of the property is wetland area with significant standing water. It is unbuildable and obviously should not be disturbed.

ORANGE – This is nominally the Rear Yard. It was apparently built up slightly during original construction and stands only a few inches above the waterline of the wetland area. The ground is very soft and wet for all but the hottest summer months, and is not suitable for building. We currently have a swing set in the back yard that has slowly been sinking into the ground over the past few years under nothing more than its own weight.

YELLOW – These areas comprise the Side Yard areas, and portions of the Front Yard. They have a significant slope away from the house, and are very wet as they get within 20-30 feet of the property line. Building in these areas would be challenging because of the slope, and the instability of the wet areas.

GREEN – This area was apparently built up during original construction, presumably to create a suitable septic field area. It is the only area on the property that is high, relatively flat, and offers firm and stable soil. **It is between the driveway and the edge of this area that I would propose to build a 12' x 16' utility shed because it is the only area that allows for a long-term stable base.**

PURPLE – This is the approximate area of the septic field and I would attempt to not encroach on it any more than necessary. The septic tank itself is at the rear of the purple area, so a utility shed in that portion of the Side Yard would cover the tank and be built directly over the septic bed. This would bring heavy trucks and equipment into the center of the field significantly raising the risk of damage to the field.

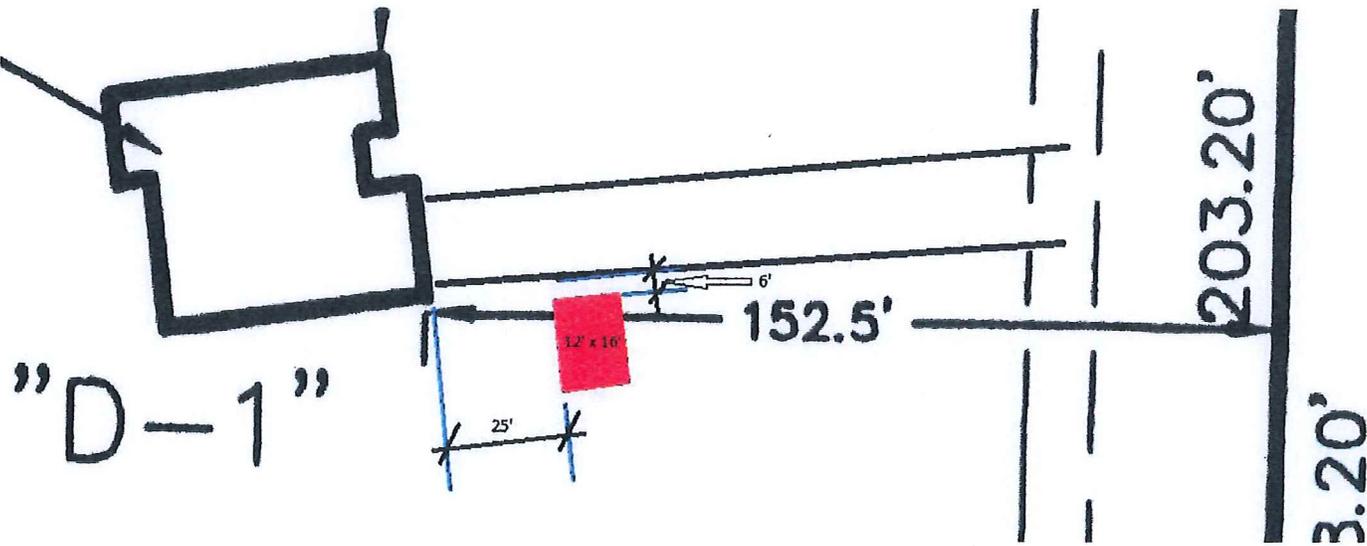
The following sketch shows the proposed location of the 12' x 16' utility shed, 25' off the front corner of the house and 6' off the edge of the driveway. Please see boundary survey on the next page for the unaltered property illustration.

The intention for this shed is to match the look and finish of the house as closely as possible. Shed construction details as follows:

Base - concrete slab 6" in thickness. Concrete to be 4,000 PSI and reinforced with 1/2" steel rebar and fiber mesh. Slab to be poured over 8" base of compacted gravel. J-bolts installed at edge at approx. 24" centers.

Framing - 12' wide x 16' deep x 8' high. 2"x4" conventional framed walls with 2"x8" headers at windows, and 2"x12" header at door opening. 1/2" OSB sheathing on walls and roof. 12" gable / 12" eave overhangs. Gable roof with 8/12 pitch (matches house) and standard trusses 2' on center.

Finishes: TimberCrest premium vinyl double 4" lap siding - color CI (matches house). Linen. 15LB roof felt. Duration Designer architectural shingles - color Sand Dune (matches house). White aluminum soffit and fascia. White premium roof edge. Vinyl gable vents. 24" x 24" white vinyl windows. 8'x7' steel rollup utility overhead door.

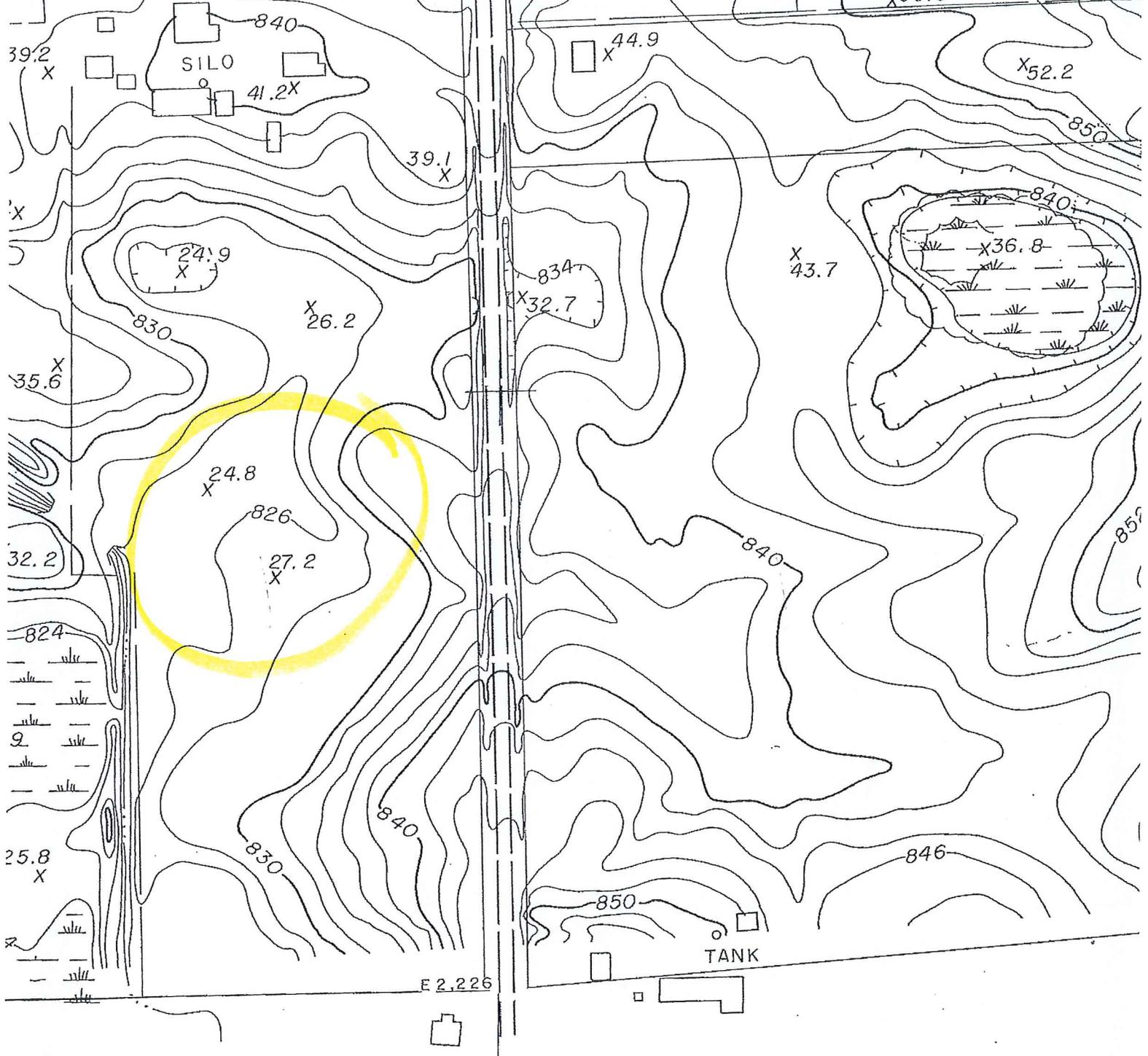


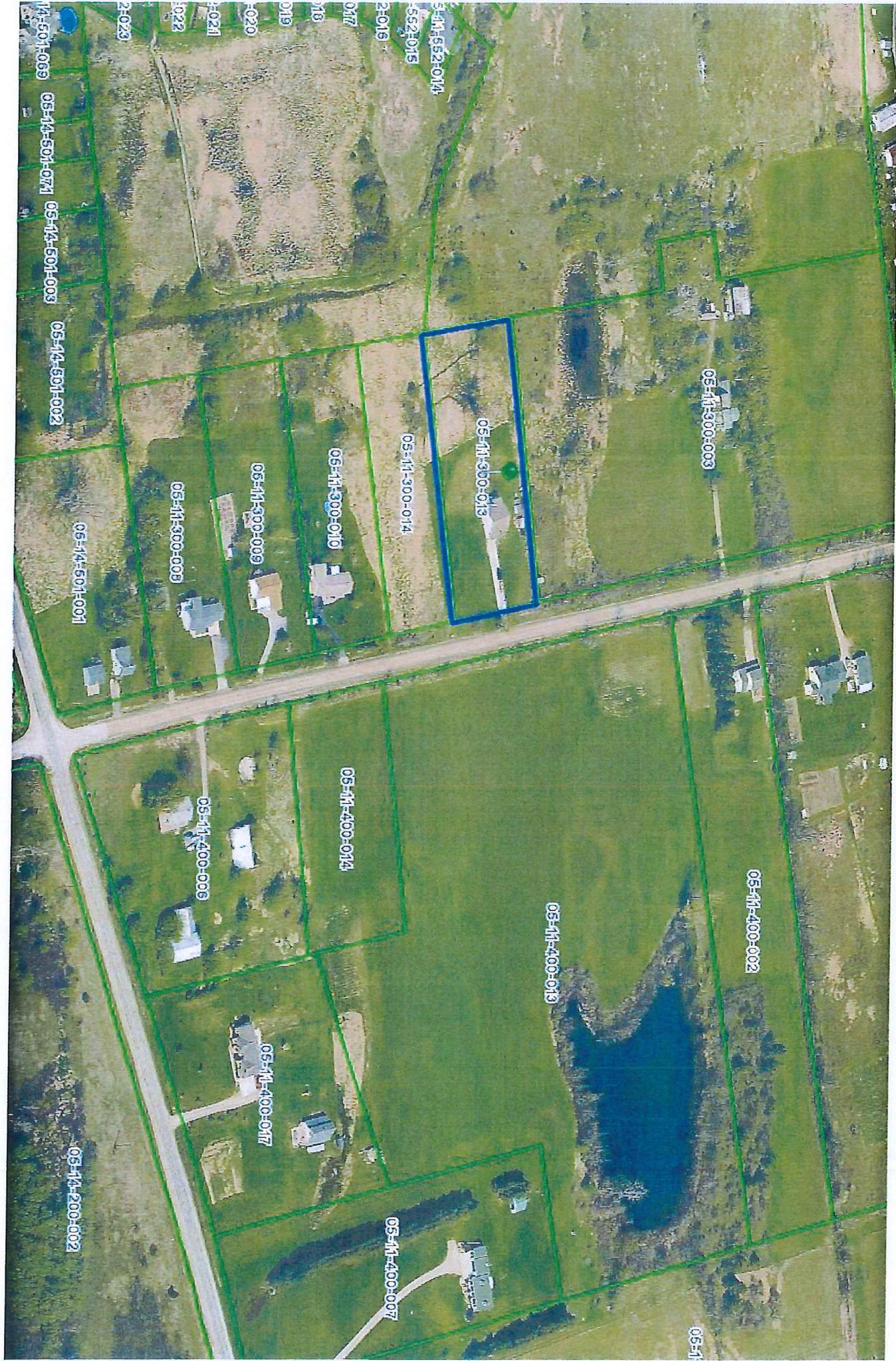












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100-017

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05-11-300-013

05-11-300-014

05-11-300-010

DAVISON TOWNSHIP
GENESEE COUNTY, MICHIGAN
ORDINANCE NO. 16-79

An ordinance amending Davison Township Zoning Ordinance 16, as amended,

The Township of Davison ORDAINS:

That Ordinance No. 16, being Davison Township Zoning Ordinance is hereby amended as follows:

SECTION 1

Section 1704 is hereby amended by the addition of Section 1704, 3 e (6) as follows:

(6) Notwithstanding the above stated restrictions to the contrary on the expansion of a nonconforming structure, the floor area of a legally established nonconforming accessory structure located on a residentially zoned property may be increased in a manner which increases its nonconformity, provided the lot coverage requirements of Section 1600, Schedule of Regulations are met.

SECTION 2

Section 201 is hereby amended by the modification of the Definition of "Accessory Building" to read as follows:

ACCESSORY BUILDING: A building subordinate to a main building on the same lot occupied by or devoted exclusively to, an accessory use.

SECTION 3

Section 1705.1 is hereby amended to read as follows:

1. The number of accessory buildings permitted on a given parcel of land shall be computed based upon the size of the parcel, in accordance with the following table.

<u>PARCEL SIZE</u>	<u>MAXIMUM NUMBER OF ACCESSORY BUILDINGS PERMITTED</u>
2 ACRES OR LESS	1
2.01 ACRES TO 5 ACRES	2
5.01 ACRES TO 10 ACRES	3
10.01 ACRES TO 15 ACRES	4
OVER 15 ACRES	5

In addition to this limitation, accessory buildings shall be subject to the lot coverage requirements of Section 1600.

SECTION 4

Section 1705 (3) is hereby amended to read as follows:

1705 (3) Accessory building (s) shall not occupy more than twenty-five (25%) percent of a required rear yard, plus (40%) percent of any non-required rear yard, provided that in no instance shall the accessory building(s)

- a. Exceed (4) times the total square feet of the primary residence in a Single Family residential district on residential parcels in excess of (10) acres.
- b. Exceed (3) times the total square feet of the primary residence in a Single Family residential district on residential parcels in excess of (5) acres, but less than (10) acres.
- c. Exceed (2) times the total square feet of the primary residence in a Single Family residential district on residential parcels in excess of (3) acres, but less than (5) acres.
- d. Exceed (1.5) times the total square feet of the primary residence in a Single Family residential district on residential parcels in excess of (1) acre but less than (3) acres.
- e. Exceed 864 square feet in a Single Family residential district on residential parcels of one (1) acre or less.

SECTION 5

Section 1705 (4) is hereby amended to read as follows:

1705 (4) Unless otherwise specified, detached accessory buildings may be located no closer than ten (10) feet to any side or rear lot line and must be located in the rear yard.

SECTION 6

The penalty for violation of this Ordinance shall be the same as those penalties set forth in Article XXVI, Section 2600 through 2604 of the Davison Township Zoning Ordinance No. 16.

SECTION 3

Notice of the adoption of this Ordinance shall be published in the Davison Index Circulated within the Township of Davison, Genesee County, Michigan within fifteen (15) days following the adoption.

This Ordinance shall become effective upon publication of the notice.

DAVISON TOWNSHIP BOARD

By: Karen M. Miller
Karen Miller, Supervisor

ADOPTED:
Dated: 7/26/2016

By: Cindy K. Shields
Cindy K. Shields, Township Clerk

Prepared by:
RICHARD A. HAMILTON
Attorney at Law
702 Church Street
Flint, MI 48502
(810) 767-6860

LAW OFFICE OF
MICHAEL T. JOLIAT, P.L.C.
702 CHURCH STREET
FLINT, MI 48502
(810) 767-6860 (810) 767-2817 FAX
michaelt.joliat@gmail.com

August 9, 2016

Jeremy Smith
Building and Planning Coordinator
Davison Township
1280 N Irish Road
Davison, MI 48423

RE: Request for Opinion
Case #16-V-2016-4 – Hearing adjournment

Dear Mr. Smith:

You forwarded a request from Mr. John Jelinek, Chairman of the Davison Township Zoning Board of Appeals, for a written opinion addressing the propriety of the Board's action July 12, 2016. The Board granted applicant Erik Taipalus' request for an adjournment of the public hearing on his request for a variance in Case #16-V-2016-4 because some members of the seven (7) member board were absent. For the reasons stated below, I believe the decision to adjourn the hearing was a valid exercise of the Board's discretion and in keeping with the objectives of the ordinance that created the Zoning Board of Appeals, though I have not found any reported decisions from Michigan Courts addressing this issue.

Davison Township established the seven (7) member Zoning Board of Appeals (ZBA), in part, to assure that the objectives of the Township Zoning Ordinance are fully and equitably achieved. The Township recognized the importance of the seven (7) member Board and the function it serves by providing procedures for the appointment of persons to fill any vacancies on the board and for the appointment of alternate members so the Board's business can be conducted by a full seven (7) member Board wherever possible.

The zoning board of appeals hears and decides questions that arise in the administration of the zoning ordinance, including, but not limited to, the interpretation of the zoning maps, appeals from and review any administrative order, decision, or determination made by an administrative official or body charged with enforcing the zoning ordinance. **The concurring vote of four (4) members of the zoning board of appeals is necessary to reverse an order, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or in this instance to grant a variance in the zoning ordinance.**

An applicant has no control over how many members of the Board will be available on the night of the public hearing. Where all seven members of the ZBA are in attendance, an applicant needs the concurring vote of four members of the Board or roughly 57% of vote. This percentage increases to 66 % if six members are present, 80% if five members are present and 100% of the vote if only four members are present. An applicant may understandably perceive that he or she is at a distinct disadvantage in going forward with a hearing when less than the entire Board is present.

At the same time, however, there no disadvantage and generally little prejudice to the members of the public, including those opposing the applicant, when a public hearing is adjourned because of board member absences. State Law requires notification of interested persons and the publication of notices to the public before any public hearing describing the nature of the request, the property subject to the request, the date and time and place of the hearing and when and where written comments will be received.

The prejudice to an unsuccessful applicant, however, is significant because the decision of the zoning board of appeals is final. The only recourse is an appeal.

Any party aggrieved by a decision of the ZBA may appeal to the circuit court and the court reviews the record and decision of the ZBA to ensure that the decision meets all of the following requirements:

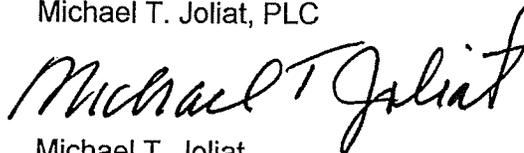
- (a) Complies with the constitution and laws of the state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the **reasonable exercise of discretion by the zoning board of appeals.**

Conclusion

I believe the July 12, 2016 action taken by the Davison Township Zoning Board of Appeals granting an adjournment of the public hearing in Case #16-V-2016-4 was a valid and reasonable exercise of the Board's discretion, in keeping with the objectives of the ordinance that created the Zoning Board of Appeals and that the circuit court would likely agree that the decision was valid and reasonable exercise of the Board's discretion.

Please contact me with any questions.

Sincerely,
Michael T. Joliat, PLC



Michael T. Joliat
Attorney at Law

CC: R. Hamilton