

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**September 28, 2020**

**CALL TO ORDER**

Chairman Greg Carnes called the Zoning Board of Appeals Meeting to order on September 28, 2020, at 7:03 PM at the Township Hall and via Zoom video conferencing.

**ROLL CALL**

*Present:* Vice-Chairman Joe Trollman, Commissioner Don Bunka.

*Guests:* Tyrone Township Planning & Zoning Administrator Ross Nicholson and Zoning Assistant Karie Carter (via Zoom)

**APPROVAL OF THE SEPTEMBER 14, 2020 MINUTES**

*Motioned by Bunka, supported by Trollman. Motion Carried.*

**READING OF PUBLIC NOTICE**

Ross Nicholson read aloud the public notice for tonight's meeting, which was published Sunday, September 13<sup>th</sup>, 2020, in the Tri-County Times and posted at the Tyrone Township Hall in compliance with the Open Meeting Act.

**NEW BUSINESS**

**APPEAL NO. 1:** Ref. Tyrone Township Zoning Ordinance No. 36 - Section 20.01 Schedule of Regulations (inclusive of building setbacks, height, and minimum lot width & lot area), Section 8.02 Cluster Development Option, and Section 21.51 Open Space Design Requirements.

A request by Tyrone Four, LLC for a minimum lot width variance, a lot area variance, a 100' front yard setback variance, a 75' rear yard setback variance, a variance to allow open space on lots, and a setback variance from the open space boundary of 75' in order to utilize a CDO (Cluster Development Option) to develop a 61.82-acre parcel and a 10.06-acre parcel located on Runyan Lake Road, south of Center Road, Fenton, Michigan 48430, Parcel IDs: 4704-21-100-021 and 4704-21-100-022. The properties are zoned FR, Farming Residential.

**COMMENTS BY APPLICANT**

Brent LaVanway of Boss Engineering gave a brief history of their project. He explained that the property, which is located immediately south of the township hall, consists of 72 acres. It was purchased by Tyrone Four about 17 years ago. In 2017 the project was activated with just 62 acres; there was a 10-acre parcel that was not part of the original application to the township. That project, which consisted of 31 lots and cluster development option, open space on lots, etc.

was approved by the Township Board in December of 2017. For various reasons, a lot of time lapsed, and the 10-acre parcel became available. They arranged an informal meeting with the township and discussed the potential for getting the 10 acres and adding them to the project that was previously approved. Everyone agreed at the time that it made sense because it would square off the parcel, provide a more continuous development, and provide a better road network. As this was occurring, the Tyrone Township Zoning Ordinance changed the minimum lot size in FR from 2 acres to 3 acres. That impacted their layout and then they concluded that they needed to rezone and do the CDO option to get the layout that was approved. The petition was submitted and went through the Planning Commission and the Township Board and the conclusion was that the board rejected the rezoning from FR to RE. He explained that they were before the ZBA tonight to request several variances that would be required to construct this particular plan.

He explained the variances. Most of the variances requested refer to section 20.01 (Schedule of Regulations) of Tyrone Township's Zoning Ordinances. The first one is the minimum lot width. The current minimum lot width in FR is 250 feet. To construct this particular plan, they are at 150' minimum so they are requesting a variance of 100'. The minimum lot area for FR is 3 acres. When their project started it was 2 acres. They are proposing minimum one-acre lots for their project so they are requesting a lot area variance of 2 acres. With the CDO, lot area is 50% of the current zoning; in FR if you were to apply the CDO you would be allowed a lot area of 1.5 acres, so they are requesting a .5-acre variance. The front setback is 150' in the FR district; they are proposing 50' in the CDO, so they are requesting a 100' variance. The rear setback in FR is 75'; they are requesting in the CDO 50' feet to the lot line and 0' to the open space boundary, therefore requesting a 75' variance. Open space on the lots – section 21.51.D, says the setback from the open space boundary is 75' and the setback for this project is 0' so they are requesting a variance of 75'. Open space on lots, section 21.51.D.3, states the Planning Commission may allow open space on lots, and they do have proposed open space on lots on this plan. The variance is to confirm the ability to have open space on lots. He explained that they have submitted documentation supporting all of the five required decision standards as mandated by the Michigan Zoning & Enabling Act. He explained that they have an addendum in the packet which is a pictorial representation that shows what happens to setbacks if they're not adjusted when a CDO is proposed. The lot area is reduced for the CDO but under the current Zoning Ordinance, there is no provision to alter the required setbacks.

### **BOARD QUESTIONS AND COMMENTS**

Carnes asked the board if they had any questions. Trollman asked if there was any written correspondence and there was not. He then asked the audience if there were any questions for the applicant. Steve Bissel, a neighbor of the township, said that he had no questions at this time.

Reid Suchodolski, who was present via zoom, stated that he had no questions for the applicant. He said he was there to hear what the ZBA's thoughts were.

Don Bunka asked them if they had something to show the 31-lot layout so they can compare the old drawing to the new drawing. Mr. LaVanway stated that he did not bring the old one but he explained how it had been previously approved. Carnes asked if the original plan contained two-

acre lots. LaVanway stated that they were two-acre lots because at the time that the was the minimum lot size for FR. Then they applied the CDO option and they were able to drop the lots to one-acre lots. The lot dimensions are all the same on the plan he has tonight as they were on the previous plan. Carnes asked if the Planning Commission gave them any reason as to why they didn't approve the request. LaVanway said he recalled that they recommended denial to the township board based on it not complying with the Michigan Zoning and Enabling Act which speaks primarily to open space preservation and gives guidelines to municipalities regarding their open space preferences. The primary discussion focused on the ability to have open space on lots and whether that is true open space. There is nothing in the Michigan Zoning and Enabling Act that prohibits open space on lots. What it says is the open space has to be 50% of the parcel and gives guidelines on what's included and excluded in open space. It says the open space has to be set aside in perpetuity. This would be a site condominium development and in the master deed and by-laws, all of the crosshatched green areas shown on the site plan would be the open space preservation area and would prohibit any development or use of that area.

Roger Myers of Myers and Myers Law Firm stated he had copies of the initial 31-unit plan and presented them to the board. The board reviewed the plan. Carnes asked about the information provided under "Substantial Justice", specifically the part about the proposed Oaks of Tyrone being serviced by a Community Quasi-Municipal Sewage System. He asked why it's not possible to create these two or three-acre lots with conventional septic systems. LaVanway said that the proposed community septic system is the same as was proposed on the initial plans. It would be located toward the eastern portion of the property. The CDO option speaks to the necessity of public services. It would have individual wells for the water supply.

Roger Myers said that after the conceptual plan with 31 units was approved, there was a meeting with Tyrone Township's legal counsel to bring in that extra ten acres. There was a rezoning request just for the 10-acres to change it to match the zoning to what was already approved. It was decided that was not the proper procedural step. That was then pulled back; then there was a PUD request for rezoning the entire property. The reason they are there before the ZBA is because rather than developing it with the original approval, the owners pursued the addition of the 10 acres, and because of many issues they encountered procedurally that delayed the process and because the zoning ordinance has changed in the interim, it made it necessary to seek all of these variances.

Carnes stated that he has been on this board for over 20 years and has had never had anything like this come before him. He said that one of the issues was that the appeal was being heard during a transitional period for the board. They typically have a representative from the Planning Commission on this board, and they don't have that person anymore. He would have provided us with the Planning Commission perspective and they are at a disadvantage without that person. He said he was hesitant to bring any request back to the board for a motion.

Roger Myers explained that the reason the Planning Commission denied it is because, from their perspective, it doesn't comply with the zoning ordinance because of the changes that have occurred. They don't have the authority to deviate from the ordinance. He believes that is what a Planning Commission representative would tell them. The ZBA, however, does have the

authority to make those decisions. The ZBA should be able to say that, given the unique circumstances and the procedural quirkiness of how this process has unfolded in the last couple of years, “yes, this plan makes sense. A majority of it was approved by the Planning Commission; but because of the change in the ordinance provisions, it no longer complies with the ordinances; but that shouldn’t prevent the township from recognizing the validity of a good plan.” The ZBA is only the body that can say the variances are appropriate given the unique circumstances.

Steve Bissell asked if the crosshatching on the plans indicated open space. He also asked if lots four & five were buildable, as there were wetlands on them. LaVanway said they did a study and an approximately 2,025 square foot house with a 2-car garage would fit on those lots. Bissell asked if the remainder of the wetlands would be filled in. LaVanway stated that it would be because it is unregulated wetlands. Bissell asked if they went to the proper authority for permission to fill in the wetlands. LaVanway stated they have had verifications of the wetlands from EGLE, and they don’t believe there is a permit needed because it is not a regulated wetland.

#### **CONSIDERATION OF ACTION**

Bunka stated he wanted to do more research on how to correctly answer these questions. He wasn’t comfortable making a decision. He made a motion to table the item so that they can do additional research and consult with other township boards. Joe Trollman seconded. The motion carried.

#### **MISCELLANEOUS BUSINESS**

None

#### **ADJOURNMENT**

Meeting was adjourned at 7:45 PM by Carnes.



Greg Carnes, ZBA Chairman  
Tyrone Township Zoning Board of Appeals

cc File

Tyrone Township Clerk  
Tyrone Township Zoning Administrator  
Tyrone Township Zoning Board of Appeals Commissioners