

Otsego County Zoning Board of Appeals

Approved Minutes for June 30, 2015

Call to Order: 6:00 pm by Chairperson Sagasser

Roll Call:

Present: Chairperson Sagasser, Vice Chairperson Hoffman, Secretary Alexander, Mr. McCarthy, Mr. Mang, Mr. Wagar

Absent: Ms. Bono

Staff Present: Mr. Schlaud, Ms. Boyak-Wohlfeil

Public Present: Bill Muzyl, TJ Lancaster II, Nelson Fairchild, Nora Corfis

Approval of Minutes from June 16, 2014:

Chairperson Sagasser requested the word ‘**tour**’ on page two (2) under **Communications** be changed to ‘*tower*’.

Motion made to approve minutes as corrected by Mr. Hoffman; Seconded by Mr. Wagar.

Motion approved unanimously.

Citizen Comment Regarding Items not on the Agenda: None

Public Hearing:

PZBA15-001

Alpine Propane LLC
2121 Dickerson Rd
Gaylord, MI 49735
010-016-200-065-04

Legal Description:

COMM @ NW COR, TH S01°01'44"W 100 FOR POB, TH S81°32'10"E 208', TH N01°04'44"W 100', TH S81°32'10"E 46.35', TH S03°26'18"W 492.88', TH S88°55'16"W 212.01', TH N01°04'44"W 433.52' TO POB. SEC 16 T30N R3W.

Nature of request:

Alpine Propane LLC is requesting a variance for a zero rear setback along the I-75 corridor for the installation of a thirty thousand gallon propane tank.

Chairperson Sagasser asked Alpine Propane’s representative, Nelson Fairchild to present the case.

Public Hearing open: 6:03 pm

Mr. Fairchild stated a special use permit was approved by the Otsego County Planning Commission last fall which included a thirty thousand gallon propane tank. The tank was set fifty feet (50’) from the south property line, per DEQ (Department of Environmental Quality) regulated setback and twenty feet (20’) from the east property line along I-75, per County Zoning Ordinance. With an increase in business, expansion of an additional thirty thousand gallon tank is needed. The original site plan depicted the tanks set end to end to comply with Otsego County setbacks but once constructed, it was believed the installation of the second tank to the east behind the existing tank made more sense for safety reasons and to utilize the property more efficiently. DEQ requires five feet (5’) between the tanks and the tank itself is approximately twelve feet

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(12') wide which would place the tank two to three feet (2-3') from the rear property line. Alpine would expand the distance between the tanks to six feet (6') for better maneuverability and the placement would not encroach on MDOT (Michigan Department of Transportation) property. A letter from MDOT was submitted stating they did not have an issue with the zero foot (0') setback as long as they could access the existing fence for repairs

Mr. Muzyl stated the original site plan had a twenty foot (20') setback from the south property line but after the approval of the special use permit, the DEQ informed them the required setback was fifty feet (50'). The tank was moved thirty feet (30') to the north to accommodate the requirement which placed it closer to the area of activity.

Chairperson Sagasser closed the public hearing.

Public Hearing closed: 6:07 pm

New Business:

1. PZBA15-001:

PZBA15-001

Alpine Propane LLC
2121 Dickerson Rd
Gaylord, MI 49735

Nature of request:

Alpine Propane LLC is requesting a variance for a zero rear setback along the I-75 corridor for the installation of a thirty thousand gallon propane tank.

Mr. Schlaud read the Finding of Fact. *SEE ATTACHMENT 1*

Chairperson Sagasser opened the discussion after Mr. Schlaud finished. He stated he had visited the site and agreed the information submitted corresponded with the site.

Vice Chairperson Hoffman questioned the possible ramifications should the I-75 overpass become an interchange with the installation of ramps.

Mr. Muzyl stated Bagley Township had questioned that and his understanding was there was not enough room for an on ramp. MichCon had not wanted to relocate their station on the corner of McCoy and Dickerson and Dickerson itself was too close to the highway for it to be possible.

Vice Chairperson Hoffman stated he understood that but things do change.

Chairperson Sagasser stated MDOT did not realize any potential problem in the future or it would have been mentioned in their letter. He also questioned if the variance was extending the just length of the tank or beyond.

Mr. Fairchild stated it was possible a third tank could be needed in the future and it would be set next to the proposed tank along the property line as well.

Mr. Alexander questioned if it was possible to stack the tanks or bury them instead of setting one behind the other.

Mr. Lancaster answered height and structure regulations prohibited the stacking but burying them was possible. Burying them was cost prohibited.

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Mr. Mang questioned why there was a safety issue with placing them end to end and how they would be filled with one behind the other.

Mr. Fairchild stated the tanks being placed end to end exposed a larger surface area and greater possibility of accident with the passing of semi-trucks. He also stated filling the tanks would not be a problem; they could be filled simultaneously and either one could be shut off with valves if necessary.

Mr. Wagar asked if there was any opposition to this variance.

Mr. Schlaud stated Land Use had not received any response from the letters sent to adjoining property owners. The letter and recommendations included in the submittal were positive.

Motion made by Mr. Alexander to accept the Finding of Fact for case PZBA15-001 as written; Seconded by Mr. Wagar.

Motion approved unanimously.

Chairperson Sagasser read Article 26/Section 26.6 item by item:

1. The Zoning Board of Appeals finds that **Section 26.6 DIMENSIONAL OR NON-USE VARIANCE** states:

Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve "practical difficulties" within the meaning of this Ordinance, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears that there is clear and convincing evidence that all the following facts and conditions exist:

26.6.1 That the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district.

Chairperson Sagasser stated in perspective of public welfare, granting the variance would help alleviate the safety issue. He asked for discussion.

Vice Chairperson Hoffman stated granting a zero (0) setback variance could open the door to future requests for the same.

Chairperson Sagasser stated each request would be based on its own merit and he did not feel they would be setting precedent.

Mr. Wagar stated the variance would remain with the property forever.

Chairperson Sagasser stated the variance *would* remain with the property and would run the length of it unless a change was requested.

26.6.2 That the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district.

Chairperson Sagasser stated the orientation and size of the parcel, the existing pipeline and I-75 and Dickerson Road running either side were issues that existed years prior to the owners purchasing the property.

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Vice Chairperson Hoffman stated they already have the rights that other properties in the area have without the variance. They can still operate; variance approval is a matter of some safety and convenience. He stated there were other means to provide the same amount of safety.

Chairperson Sagasser stated there *were* practical difficulties. Due to the narrowness of the property and the pipeline *and* pipeline easement, which prohibited building on a portion of the property made this situation unique. He did not think granting the variance would give them an extra right.

Mr. Muzyl commented he thought other setback variances had been granted along the I-75 corridor for the existing billboards. He had one on his property with the posts right on the line.

Mr. Mang questioned whether the County addressed the billboards along the highway.

Mr. Schlaud stated it was a state highway issue; they were regulated at the state level.

26.6.3 That special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district.

Vice Chairperson Hoffman stated they were aware of the special conditions when they purchased the property in 2014 and had plans drawn to allow them to do what they wanted without a variance.

Chairperson Sagasser stated the intent of the variance was to allow for modifications of the set rules in the Ordinance in the best interest of the County. He stated the narrowness of the property was a unique condition to this B3 parcel that did not exist in all B3 Districts.

Mr. Wagar concurred stating this parcel was the widest along that corridor and still there was not adequate room for expansion. The variance was allowing them to change their original plan to create a safer atmosphere for everyone.

26.6.4 That the special conditions or circumstances are not the result of actions by the applicant or predecessor in title.

Chairperson Sagasser stated the conditions of property narrowness, the underground pipeline and pipeline easement existed prior to the purchase of the property.

Vice Chairperson Hoffman stated the owners had decided the layout on the property and thought there were other configurations they could have used without needing a variance. He did not want to set precedence and felt the more variances allowed, the more obsolete an ordinance section becomes. He stated safety wise, they could add a barrier.

Mr. Muzyl stated that was already a requirement and would be installed.

26.6.5 That the requested variance is the minimum variance necessary that will make possible the reasonable use of the land.

Mr. Wagar stated that had already been addressed and thought the safety issue was significant.

Chairperson Sagasser stated he originally thought the requested setback was more than the minimum and it running the entire length of the parcel was unnecessary but thought the difference was minor and should they need to install another tank, it could be done safely.

Mr. Alexander questioned the '*minimum*'.

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Mr. Muzyl stated the area was surveyed and with the size of the tank, a two foot (2') setback could be the minimum if taken literally.

Mr. Fairchild stated because of the setback issue with the DEQ, the original south setback of twenty feet (20') was modified to fifty feet (50') which pushed the first tank forward by thirty feet (30') creating the safety issue.

Mr. Muzyl stated the plan *would* work as drawn but in the winter especially, with trucks coming and going, it became more of an issue.

Mr. Alexander questioned where the DEQ setback was referenced in the informational packet, stating it *was* an important issue.

Mr. Mang concurred and stated he had not understood the issue until it was explained on site.

Chairperson Sagasser stated it was on page four (4) of the submittal but was not clear that the setbacks had changed from the originally approved County ordinance setbacks. Having it explained and seeing the impact of the change made it clear.

Mr. Alexander requested the setback change be added to the Finding of Fact.

Motion made by Mr. Mang for the addition to the Finding of Fact as follows; Seconded by Mr. Hoffman.

12. Subsequent to the approval of the Special Use Permit by the Otsego County Planning Commission, the original site plan setback of the south property line was modified from twenty feet (20') to fifty feet (50') per DEQ setback requirement. *SEE ATTACHMENT 1*

Motion approved unanimously.

Chairperson Sagasser read and requested a motion for 26.6.1.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.1; Seconded by Mr. Mang:

Roll call vote

Sagasser:	yes
Hoffman:	no
Alexander:	yes
McCarthy:	yes
Mang:	yes
Wagar:	yes

Yes-5

No-1

Chairperson Sagasser read and requested a motion for 26.6.2.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.2; Seconded by Mr. McCarthy:

Roll call vote

Sagasser:	yes
Hoffman:	no
Alexander:	yes
McCarthy:	yes
Mang:	no
Wagar:	yes

Yes-4

No-2

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Chairperson Sagasser read and requested a motion for 26.6.3.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.3; Seconded by Mr. Alexander:

Roll call vote

Sagasser: **yes**
Hoffman: **no**
Alexander: **yes**
McCarthy: **yes**
Mang: **yes**
Wagar: **yes**

Yes-5

No-1

Chairperson Sagasser read and requested a motion for 26.6.4.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.4; Seconded by Mr. McCarthy:

Roll call vote

Sagasser: **yes**
Hoffman: **no**
Alexander: **yes**
McCarthy: **yes**
Mang: **no**
Wagar: **yes**

Yes-4

No-2

Chairperson Sagasser read and requested a motion for 26.6.5.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.5; Seconded by Mr. Mang:

Roll call vote

Sagasser: **yes**
Hoffman: **no**
Alexander: **yes**
McCarthy: **yes**
Mang: **no**
Wagar: **yes**

Yes-4

No-2

Motion made by Mr. Alexander that the Otsego County Zoning Board of Appeals approve PZBA15-001 based on the twelve (12) Finding of Fact and Section 26.6.1 through 26.6.5; Seconded by Mr. McCarthy.

Roll call vote

Sagasser: **yes**
Hoffman: **no**
Alexander: **yes**
McCarthy: **yes**
Mang: **no**
Wagar: **yes**

Yes-4

No-2

Variance approved

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Chairperson Sagasser stated the variance was approved and they could move forward with their plan.

Mr. Schlaud stated plans for setting the tank were needed at the Building Department.

2. Expiring Terms/Reappointment
 - a. Alexander
 - b. Mang
 - c. Wagar

Members received applications to submit to the County for reappointment if desired.

3. Election of ZBA Officers

Mr. Sagasser nominated for Chairperson by Mr. Alexander; Seconded by Mr. Wagar
Vote unanimous

Mr. Sagasser elected Chairperson

Mr. Hoffman nominated for Vice-Chairperson by Mr. Sagasser; Seconded by Mr. McCarthy
Vote unanimous

Mr. Hoffman elected Vice-Chairperson

Mr. McCarthy nominated for Secretary by Mr. Alexander; Seconded by Mr. Wagar
Vote unanimous

Mr. McCarthy elected Secretary

Old Business: None

Communications: None

Adjournment: 7:35 pm by Chairperson Sagasser

Phil Alexander, ZBA Secretary

Christine Boyak-Wohlfeil, Recording Secretary

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ATTACHMENT 1:

FINDING OF FACT:

1. This is a proposal for a rear setback variance. *Exhibit #1, Exhibit #5*
2. The property is located in a B3/Business & Light Manufacturing Zoning District. *Exhibit #2*
3. The rear setback in a B3/Business & Light Manufacturing Zoning District is twenty (20) feet. *Exhibit #3*
4. The property is currently under the ownership of Alpine Propane LLC. *Exhibit #4*
5. Nelson R Fairchild is the case representative for Alpine Propane LLC. *Exhibit #6*
6. The Public Hearing Notice was published in the Herald Times on June 12, 2015 *Exhibit #7*
7. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
8. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
9. The Zoning Board of Appeals has the authority to approve a variance request after review and compliance with the Otsego County Zoning Ordinance. (Section 26.6) *Exhibit #3*
10. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
11. The site plan requirements of Article 23 have been reviewed by Otsego County Land Use and all requirements pertaining to the proposed development have been addressed by the Applicant. *Exhibit #5, Exhibit #12*
12. Subsequent to the approval of the Special Use Permit by the Otsego County Planning Commission, the original site plan setback of the south property line was modified from twenty feet (20') to fifty feet (50') per DEQ setback requirement. *Exhibit #1*

FINDING OF FACT UNDER ARTICLE 26/BOARD OF APPEALS

2. The Zoning Board of Appeals finds that **Section 26.6 DIMENSIONAL OR NON-USE VARIANCE** states:
- Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve “practical difficulties” within the meaning of this Ordinance, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears that there is clear and convincing evidence that all the following facts and conditions exist:

26.6.1 That the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.1; Seconded by Mr. Mang:

Roll call vote

Yes-5

No-1

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26.6.2 That the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.2; Seconded by Mr. McCarthy:

Roll call vote

Yes-4

No-2

26.6.3 That special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.3; Seconded by Mr. Alexander:

Roll call vote

Yes-5

No-1

26.6.4 That the special conditions or circumstances are not the result of actions by the applicant or predecessor in title.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.4; Seconded by Mr. McCarthy:

Roll call vote

Yes-4

No-2

26.6.5 That the requested variance is the minimum variance necessary that will make possible the reasonable use of the land.

Motion made by Mr. Wagar to proceed with a vote on Section 26.6.5; Seconded by Mr. Mang:

Roll call vote

Yes-4

No-2