

CHARTER TOWNSHIP OF FLUSHING

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**PLANNING COMMISSION MINUTES**

DATE: SEPTEMBER 12, 2005

TIME: 7:00 P.M.

WEB ADDRESS <http://www.gfn.org/flushing/index.html>

**MEMBERS OF PLANNING COMMISSION**

Aaron Bowron, Chair

Jerome Doyle, Vice Chair

Eric Swanson, Secretary

Richard Buell

Ronald Flowers

David Gibbs

Barry Pratt, Board of Trustee Representative

Jerald W. Fitch, Building Inspector

Julia A. Morford, Recording Secretary

**PRESENT:** Bowron, Doyle, Swanson, Buell, Flowers, Pratt, Fitch, and Morford

**ABSENT:** Gibbs

**OTHERS PRESENT:** Gary Miller, Scott Chappell, Mike Fischer, and Ryan Cuz

**I. MEETING CALLED TO ORDER** at 7:00 p.m. by Planning Commission Chair Aaron Bowron with Roll Call and the Pledge to the American Flag.

**II. ADOPTION OF AGENDA: FLOWERS MOVED**, seconded by Buell to adopt the Agenda with the elimination of the Approval of Minutes. **MOTION CARRIED.**

**III. UNFINISHED BUSINESS:**

1. **Gary Miller, 10010 Ruby Drive, Flushing, MI**  
**Special Use Permit to Enlarge an Existing Pond Parcel No. 08-16-200-054**  
**and an Earth Removal Permit to Remove Dirt from the Enlarged Pond**

**BOWRON** stated that **GARY MILLER (MILLER)** had been in attendance at the August 8, 2005 Planning Commission Meeting to request a Special Use Permit to enlarge an existing pond and also to obtain an earth removal permit to remove dirt from the proposed enlarged pond. There had been concerns, from the Planning Commission, regarding drainage issues and setbacks.

**7:03 P.M. OPENED TO PUBLIC COMMENTS CONCERNING THE SPECIAL USE PERMIT**

**MILLER** stated the engineered drawing of the proposed enlarged pond location (which had been distributed to the Planning Commission prior to the meeting) showed the drainage flowing to the North and West. A ditch is located on the East side of **MILLER'S** property leading to property owned by **DONALD LISKE (LISKE)**. The ditch has a silt screen and stones in the bottom but has not been shedding the water properly. **MILLER** will be shooting the grades for the existing ditch so the drainage (from **LISKE'S** property) will flow to the existing pond on **MILLER'S** property. The drainage system, on the West side of **MILLER'S** existing pond, should take care of seasonal rainfall or water overage.

**COMMENTS, QUESTIONS, AND CONCERNS:**

1. **BOWRON** wanted to know where the drain would be located coming from the **LISKE** property? **MILLER** stated the drain would be located at approximately the middle of the existing pond (it does not show on the small engineered drawing).
2. **BOWRON** wanted to know when the ten (10) acre parcel was divided. **MILLER** stated the division had occurred August, 2005. **BOWRON** wanted to know if there was an easement reserved for the drainage flowing to the property to the West.
3. **DOYLE** wanted to know the exact property owned by **MILLER**. **MILLER** stated he owned all the property detailed, except a 250' x 191.10' parcel on the West side of the property, which has been sold to **SCOTT CHAPPELL (CHAPPELL)**. The remaining property owned by **MILLER** has not been divided or sold.
4. **FLOWERS** wanted to know if the ten (10) acre property, to the South had been divided; only one (1) acre had been sold to **CHAPPELL**. **BUELL** wanted to know where the access was to **CHAPPELL'S** property. **MILLER** stated it would be the 40.02 foot easement (shown on small engineered drawing), which would come off Ruby Drive.
5. **DOYLE** felt the drawing (small engineered drawing) only told the make up of the plot, and the grade of the property; the drawing did not define the slopes and property lines of the property (per the ordinance).
6. **DOYLE** was concerned about the drainage to the North off the low area. **MILLER** stated the property currently drains to the North but, per the small engineered drawing, the drawn ovals, in the North direction of the drawing, indicated the drainage system.

**BOWRON** stated he felt the main issue would be with the setbacks. Until such time as the setbacks could be addressed properly, any other discussion would not be timely.

The petition would be reviewed in accordance with Zoning Ordinance Article XVIII, Section 20-1804 (bb).

Subsection D-1 states:

“the setback distance for the pond shall be a minimum of seventy-five (75) feet from the waters edge at its highest point from any adjoining property line. There shall be as minimum of 25 feet between the edge of any berm or other placement of elevated soils removed from the excavated pond and any adjoining property line. The total height, as measured from original grade, or any berm or elevated soils and any fence or other materials built or placed upon the berm, except trees or other vegetation, shall not exceed a total of 6 feet. This provision shall not prohibit the placement of an otherwise appropriate fence across a part of such berm, which may cause the height of the fence to exceed 6 feet at the point of crossing the berm.

**MILLER** stated **CHAPPELL** purchased the particular property because he (Chappell) wanted to be on the water. **BOWRON** stated the existing pond would be a non conforming use. The proposed addition to the existing pond does not fall within the seventy-five (75) foot.

**OPTIONS:**

- The outermost edge of the pond could be brought in – would give the 75 foot from the property line – but would not solve the matter.
- The split has rendered the pond non-conforming.
- Ordinance provides for Article III, Section 20-309 (a), Non-Conforming Use Generally:  
“any use of land or structure, which use was lawful on April 8, 1983, may be continued; provided, however, such use shall have continued in operation, does not constitute a nuisance, and shall not be enlarged, altered, or changed in area, activity, or content during its continuance, except as provided otherwise by property authority.”

**An addition could not be added to an existing pond without directly violating the provision.**

**BOWRON** stated the Planning Commission would work with **MILLER**. Reference was made to:

**Article XVIII, Section 20-1804 bb (e) 1 – (a-c)**

Limitations:

1. No pond shall be located upon, cross, or extend beyond an existing property line and a permit shall not be issued for construction of a pond on more than one property, unless, in addition to the other requirements of this section:
  - a. The owners of each property on which any part of the pond is to be located, submit a joint application for a special use permit, signed by each property owners.
  - b. Each property owner executes a reciprocal easement, in recordable form, satisfactory to the planning commission which describes the benefits and burdens to each property, including adequate provisions to assure maintenance of the pond.
  - c. The easement shall be recorded as a pre-condition to issuance of the permit.

**SOLUTION:**

1. Extend the existing pond, with the proposed addition, onto **CHAPPELL'S** property - there would have to be a reciprocal easement. The issue would not be within the seventy-five (75) feet so therefore, would be a non-conforming use which an addition could not be added.
  - a. **CHAPPELL** was in agreement with the situation.
  - b. No one in the audience was in opposition of the situation.
  - c. **BRIAN CUZ (CUZ)** property borders **MILLER** on the West side and was in favor of the situation. The drainage issue was the main concern for **CUZ**.

**PRATT** wanted to know if there was an existing drain that **MILLER** could hook into. Rowe Drain is the Drain to the West of **MILLER'S** property.

**DOYLE** felt the small engineered drawing did not exactly show what was taking place such as: 1) the location of the grades on the drain, 2) would there be berms, 3) the ditch setbacks, etc and 4) the heights of the different structures, etc. When approval has been given for the plans, the information has to be complete per the ordinances. **FLOWERS** stated there had to be an easement for water to flow across someone else's property.

**7:20 P.M. CLOSED TO THE AUDIENCE**

**COMMENTS FROM THE BUILDING INSPECTOR:**

**JERRY FITCH (FITCH)** Building Inspector stated he had no comments other than what has been stated.

**CONCLUSION:**

**BOWRON** stated additional information would be needed other than what has been shown on the small engineered drawing such as:

- grades listed for the proposed addition
- setbacks would have to be listed
- the proposed addition to the pond would be extended over the **CHAPPELL** property
- recorded easements would be needed
- exact location of the drain behind **LISKE'S** property

**DOYLE** stated the purpose of ordinances would be to allow properties around **MILLER** not to suffer due to **MILLER** having dug a pond; the drainage would be the big deal.

**BOWRON** made reference to Article XIV, Section 20-1902, *Site Plan Review Requirements* and suggested that **MILLER** contact the engineer with details of the ordinance and to obtain legal counsel regarding the reciprocal easements. The engineered drawing has to be consistent with the Zoning Ordinance in order for the Planning Commission to act on the matter. **PRATT** stated there would be a liability with just the drainage system. **BOWRON** stated nothing different is being done, which the Planning Commission would not ask another petitioner, in a similar situation to abide.

**DOYLE** wanted to know where the sand, from the proposed addition, would be placed. The dirt from the proposed addition would be placed on **CHAPPELL'S** property. **DOYLE** felt if **MILLER** could view a plot plan, he (Miller) would be able to see exactly what was needed on the engineered drawing.

**PRATT** wanted to know if the Planning Commission provided **MILLER** with a list of concerns that were needed, could **MILLER** return to the Special Planning Commission Meeting on September 26, 2005? **BOWRON** stated his concerns would be subsumed under *Requirements of the Pond Ordinance* and the *Site Plan Review Requirements*, specifically where the drains would be located. **DOYLE** stated a drain was located on the West side of the property with grades; the engineer would then know where the drain was located and the grades. Any kind of movement of water which would come off the pond would have to go into another drain. If it didn't go to the proper drain, it would go on someone else's property. There are no berms listed on the small engineered drawing. **FLOWERS** stated the berms would control the runoff flow of the water.

The next Special Meeting of the Planning Commission would be Monday, September 26, 2005 and the next Regular Scheduled Meeting would be Monday, October 3, 2005.

**FLOWERS MOVED**, seconded by Doyle to postpone the Gary Miller Special Use Permit until the documents and engineered drawing have been provided. **MOTION CARRIED.**

**IV. NEW BUSINESS:**

1. **Michael Fischer, 11072 Mt. Morris Road, Flushing, Michigan**  
**Special Use Permit to Place an Accessory Structure in the Front Yard**  
**Parcel No. 08-05-400-005**

**BOWRON** stated the Special Use Permit referred to Article XVIII, Section 20-1804,  
*Requirements for Permitted Special Uses, Accessory Structures:*

- A. Accessory Structures in front yards in RSA and RU-1 subject to the following conditions:
1. The lot the accessory structure shall be located on is at least 400 feet deep or adjacent to a river or lake.
  2. The accessory structure shall conform to all minimum front and side yard setbacks required for principal structures in the district it is located in.
  3. The accessory structure shall either be screened from view of the roadway and adjacent lots or be designed to be compatible with surrounding residential structures in size, height, style of siding and landscaping.

**7:40 P.M. OPENED TO THE AUDIENCE**

**MICHAEL FISCHER (FISCHER)** of 11072 Mt. Morris Road, Flushing, Michigan (North side of Mt. Morris Road) was present to request a Special Use Permit to place an accessory structure in the front yard. **FISCHER** presented photographs of the proposed structure.

**SPECIFICATIONS OF THE PROPOSED ACCESSORY STRUCTURE:**

- electricity will be added to the structure in the future
- the design will be a Ranch style with a porch on the front
- the exterior will match the house
- there will be an asphalt roof
- there will be metal siding painted the same color of the house
- the construction will be a pole barn type
- there will be a concrete floor in the structure

**MISCELLANEOUS INFORMATION:**

- an existing barn would stay
- there would be one hundred twenty (120) feet from the road to the house
- there would be one-quarter (1/4) mile from the proposed structure to the back of **FISCHER'S** property
- there would be fifteen (15) feet from the East property lot line
- house was originally placed on one hundred twenty-five (125) feet (own lot); the remainder of the property is one (1) parcel
- there is animals in the existing barn

- a. if have animals in the proposed barn, the distance could not be closer than seventy-five (75) feet (Article IV, Section 20-419, Site Regulations)
  - b. if have animals, have to be forty (40) feet from the property line and seventy-five (75) feet from an adjacent residence
- there is fifteen (15) feet between the proposed structure and the property line
  - **FITCH** stated the ordinance applied to residential property twenty (20) acres or less in size – the ordinance does not address agricultural structures
  - **FISCHER** has forty (40) plus acres of land
  - there is forty (40) feet on the West side of the building
  - **FISCHER** stated the original plan was to put some animals in the existing structure and some in the proposed structure.
  - the front of the neighbor’s house is the same distance as **FISCHER’S** house – approximately forty (40) feet
  - **FISCHER** stated due to a huge hill in the back of his house and it crossed a flood plain, he decided to place the accessory structure in the front yard; it would be more convenient for the structure to be close to the house.
  - **DOYLE** stated the ordinance was put together because of a lot of complaints of “out buildings” were being built in front yards rather than in the back yard.
  - **FISCHER** stated the front yard and the side yards were blocked by trees. **FISCHER** has met all the conditions stated in the ordinance.

**BOWRON** made reference to Article IV, Section 20-419, *Farm Animals and Horses*

**BOWRON** stated the provision did not apply for the reason that it was stipulated for parcels less than twenty (20) acres in the RSA district. **FISCHER’S** property consists of more acreage. The conditions would be satisfied per the conditions of the accessory structures in the front yard:

- The property is over four hundred (400) feet
- A stream is located in the back yard (although the ordinance specifies a river)
- The back of the house is in the flood plain area
- Setback conditions:
  - a. side setbacks – required 10’ – has 15’
  - b. rear setbacks – required 25’ – has the amount
  - c. front setbacks – has 25’

**DOYLE** wanted to know how the neighbor to the East felt about the construction of the structure. **FISCHER** stated he had no problems with the neighbor.

**7:56 P.M. CLOSED TO THE AUDIENCE**

**COMMENTS FROM THE BUILDING INSPECTOR:**

1. **FITCH** has no problem with the location and use of the structure

**LETTERS OF CORRESPONDENCE:**

- 1.. Leonard and Marge Sanborn, 11111 W. Mt. Morris Road, Flushing, MI – “agrees with the construction of the structure.” (located across the street on the North side of Mt. Morris Road)
2. Richard and JoAnn McKone, 11110 W. Mt. Morris Road, Flushing, MI – “have no objections.” (neighbor to the West).

**BUELL MOVED**, seconded by Swanson for the approval of **MICHAEL FISCHER’S** request for an accessory structure to be placed in the front yard of Parcel No. 08-05-400-005. **MOTION CARRIED.**

**V. PUBLIC COMMENTS:**

**8:01 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS**

**FITCH** recently was approached by Pastor Dale Lewis (Rev. Lewis) of the proposed North Flushing Baptist Church (to be constructed on Mt. Morris Road and Morrish Road) concerning placing a temporary fence along the Western church property line, for construction purposes only. If the church should decide to place a permanent fence along the Western church property line would Rev. Lewis need to come before the Planning Commission to amend the site plan? It was determined, from a prior Planning Commission meeting, the church would have trees along the West side. **FITCH** stated that during the summer months there had been concerns from the neighbors on Morrish Road. **BOWRON** felt if North Flushing Baptist Church would like to have a permanent fence, they should come before the Planning Commission with an amended site plan, if only for the opportunity for the neighbors to comment. **DOYLE** stated this would make the neighbors aware the fence would be located on the property line. It was determined that Pastor Lewis should return to the Planning Commission with an amended site plan drawing before a permanent fence should be erected.

**8:05 P.M. – CLOSED FOR PUBLIC COMMENTS FOR NON-AGENDA ITEMS**

**VI. BOARD COMMENTS:**

1. **BOWRON** stated there would be a Public Hearing on Monday, September 26, 2005 regarding Section 20-702 for the C-1 and C-2 Zoning Ordinance.
2. **BUELL** wanted to know if there was still a “Fence and Weed Commissioner”.
3. **PRATT** stated recently there had been an article in the Michigan Townships Association (MTA) *Capitol Currents*, concerning questions that had been brought to everyone



attention at the 2005 Summer Legislative Conference at Boyle Highlands regarding *Conditional Rezoning* laws. (Copies of the article were later passed out to the Planning Commission). **FITCH** has contacted **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)** who highly recommended the MTA sample Conditional Rezoning Ordinance. (**MORFORD** will get a sample Conditional Rezoning Ordinance from MTA).

4. Discussion for Future Planning Commission Meetings:
  - a. Grading Ordinances
  - b. Conditional Rezoning
  
5. **DOYLE** felt the Planning Commission should concern itself with the distance barrier between any property over twenty (20) acres. Comments were:
  - a. farms should be exempt
  - b. farms would have driven the ordinance
  - c. issue would be with horses
  - d. use to require only one (1) acre but changed to two (2) acres to keep horses away from homes
  - e. State Construction Code states that agricultural buildings, if truly agricultural use, would be exempt from a building permit but not zoning ordinances
  - f. ordinances should be amended to cover the situation (over twenty (20) acres)
  - g. what would happen if a house was constructed after an accessory structure was constructed which would make the structure non-conforming
  
6. **DOYLE** had received notice for an upcoming MTA Seminar entitled *Processing Land Division and Combination* Requests which has been scheduled for December 1, 2005 at the Holiday Inn Gateway Centre, Flint, Michigan. The issue will be taken to the next Board of Trustees Meeting for attendance approval.

#### **VII. MEETING SCHEDULE:**

**PROPOSED SPECIAL MEETING – MONDAY, SEPTEMBER 26, 2005 – 7:00 P.M.**

**REGULAR SCHEDULED MEETING – MONDAY, OCTOBER 3, 2005 – 7:00 P.M.**

**PROPOSED SPECIAL MEETING – MONDAY, OCTOBER 24, 2005 – 7:00 P.M.**

**REGULAR SCHEDULED MEETING – MONDAY, NOVEMBER 14, 2005 – 7:00 P.M.**

**VIII. ADJOURNMENT:** There being no further business, **BOWRON** adjourned the Planning Commission Meeting at 8:27 p.m.

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AARON BOWRON, Chair

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JULIA A. MORFORD, Recording Secretary

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ERIC SWANSON, Secretary

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Date of Approval

Planningminutes 091205