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**Charter Township of Kalamazoo
Minutes of the Zoning Board of Appeals
Held on May 20, 2020**

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A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was held on Wednesday, May 20, 2020. Due to restrictions of COVID-19 and Orders of Michigan Governor Gretchen Whitmer, the meeting was conducted remotely via ZOOM video conference.

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Call to Order.

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The Chairman called the meeting to order at 7:13p.m.

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Present Were:

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Jim Short, Chairman
Steve Leuty
Robert Mihelich
Fred Nagler
Maryanne Sydlick, Alternate

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Absent was:

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Shawn Blue (excused) (Motion by Nagler, supported by R. Mihelich, unanimously approved)

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Also present were: Township Planner Patrick Hudson, Township Manager Dexter Mitchell Township Attorney Roxanne Seeber, Township Supervisor Don Martin, Katarina Kusmack, and 3 members of the public.

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Roll Call.

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Chairman Short called the roll.

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Approval of the Agenda.

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The ZBA members received a copy of the agenda in their member packets.

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Sydlik moved, supported by Nagler, to approve the agenda as presented. The motion passed unanimously.

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Approval of the Minutes of the February 19, 2020 Meeting.

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The next item on the agenda was approval of the minutes of the February 19, 2020 regular Zoning Board of Appeals meeting. The draft meeting minutes were provided to all ZBA members in their agenda packets.

1 Mihelich asked about a page that was included in the minute which included the names of former
2 ZBA members. Seeber state that it was part of the ZBA decision form from the last meeting. It
3 had been modified to include the correct names and information before it was provided to the
4 applicant. This page should not have been included and was not part of the minutes. The board
5 disregarded the page and moved on.

6
7 Mihelich moved, supported by Nagler, to approve the minutes of the February 19, 2020 regular
8 ZBA meeting as presented. The motion passed unanimously. Mihelich authorized Seeber to sign
9 the approved minutes on his behalf and forward them to the Hudson to be included in the
10 Township's records.

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12 **Public Hearings.**

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14 **Matthew Clysdale, 579 Nazareth Road, Variance Request**

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16 The next item on the agenda was consideration of the request of Matthew Clysdale, 579 Nazareth
17 Road, Kalamazoo Michigan for a variance from the maximum 2-accessory structures per parcel
18 limitation contained in Section 2.03.C.4 of the Township Zoning Ordinance in order to permit the
19 installation of a ground-mounted solar array, while retaining two existing accessory structures.
20 The parcel is located in the R-2 Residence District. Standards for variance consideration are
21 contained in Section 26.05 of the Township Zoning Ordinance.

22
23 No staff report was provided.

24
25 Short asked Hudson for clarification as to whether the request was a variance for a third
26 accessory structure. Hudson said yes this is a variance to allow a third structure. Short wanted to
27 confirm that it is still under the lot coverage permitted by the township. Hudson said that is
28 correct, it is nowhere near the lot coverage.

29
30 Brandon Flood was present to speak on behalf of Clysdale. He is from the company Helios Solar,
31 who is the contractor for Clysdale. He clarified that it is just an addition of a solar array, while
32 retaining two existing accessory structures. Clysdale is wanting to put the array in his back yard
33 and all the setbacks have been met. Flood noted that the array itself would be considered a non-
34 permanent structure because it can be dissembled and moved if need be.

35
36 Short asked Flood if the two additional structures on the property were related to the array.
37 Flood said no.

38
39 Short asked the board for comment.

40
41 Mihelich asked if the array is just going to be in the dirt or if a slab will be poured. Flood said the
42 foundation for the array is a driven pylon, so there will be steel C channel pylons that get put into
43 the ground about 8.5 feet. Then racking is assembled with braces and rails onto those pylons.

1 Short asked if there was any sound that will be given off from the device. Flood said no, the array
2 gives off no sound. Also, there is also an anti-reflective coat on it, so no glare if given off.

3
4 Short asked Hudson for any additional comments or information. Hudson said no, but then added
5 that this structure would qualify if the other two weren't there.

6
7 Short opened the public hearing and invited any interested party to give public comment in
8 support of or in opposition to the applicant's request for a variance.

9
10 Chris Mihelich, 2502 Brook Drive, said that as the President of the Eastwood Community
11 Association, that it is nice to see investment into solar infrastructure on people's property.

12
13 Sydlik questioned what the structure looked like. Flood started to describe, but then Manager
14 Mitchell asked Flood to share his screen to show it if possible. Flood showed a picture from a
15 previous project. Flood said that Clysdale's project will be 50 feet in width.

16
17 Short asked Hudson if this project is similar to what happened at the sheriff's department. Both
18 Hudson and Flood said yes, almost identical. Flood said his company did that project too.

19
20 Short asked for more public comment. Public hearing closed at 7:30PM.

21
22 Attorney Seeber recommended that the Board review the standards of approval for granting a
23 request for a variance which are contained in Section 26.05 and read the same to the Board.
24 Section 26.05 B(4) titled "Variances" states,

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26 "The ZBA shall have authority in specific cases to authorize one or more
27 dimensional or "non-use" variances from the strict letter and terms of this
28 Ordinance by varying or modifying any of its rules or provisions so that the spirit
29 of this Ordinance is observed, public safety secured, and substantial justice done.
30 A dimensional or non-use variance allows a deviation from the dimensional (i.e.,
31 height, bulk, setback) requirements of the Ordinance. A use variance authorizes
32 the establishment of a use of land that is otherwise prohibited in a zoning district.
33 The ZBA is not authorized to grant use variances by this Ordinance.

34
35 Such authority shall be exercised in accordance with the following standards.

- 36
37 a. The ZBA may grant a requested "non-use" variance only upon a finding that
38 practical difficulties exist and that the need for the variance is due to unique
39 circumstances peculiar to the property and not generally applicable in the
40 area or to other properties in the same zoning district. In determining
41 whether practical difficulties exist, the ZBA shall consider the following
42 factors:

43

1 (1) Strict compliance with restrictions governing area, setback,
2 frontage, height, bulk, density or other non-use matters, will
3 unreasonably prevent the owner from using the property for a
4 permitted purpose or will render ordinance conformity
5 unnecessarily burdensome.
6

7 Leuty was able to chime in with his audio in the Zoom meeting after some technical issues.
8 He reiterated what has happened so far. In reference to the factor that Seeber read, Leuty
9 mentioned that it seems that it looks like it could be close to the septic tank, but they can
10 request that from the Health Department and call in a Miss Dig. He said that he believes
11 this use is appropriate for an exception.
12

13 (2) The variance will do substantial justice to the applicant, as well as
14 to other property owners.
15

16 Leuty made a note to this factor that there are no neighbors to the North and that there
17 is only woods to the North.
18

19 (3) A lesser variance than requested will not give substantial relief to
20 the applicant and/or be consistent with justice to other property
21 owners.
22

23 Nagler said that there is no lesser variance available, so this factor is not relevant.
24

25 (4) The problem and resulting need for the variance has not been self-
26 created by the applicant and/or the applicant's predecessors. (For
27 example, a variance needed for a proposed lot split would, by
28 definition, be self-created, so such a variance typically would not be
29 granted.)”
30

31 Nagler mentioned that he thinks the only area of self-creation is that there are already
32 two existing structures there, however the idea of a solar array was probably not an
33 option when they put in the first two structures. Short agreed.
34

35 Short asked for more board comment. He said that he drove by the property today the property
36 is down the hill and in a wooded area. Plus the board already allowed one of these.
37

38 Nagler said he was in favor. Nagler said that he was originally worried about lot coverage but can
39 see that is not an issue now.
40

41 Mihelich said that he had no problem with how this is laid out.
42

43 Sydlik has no comment.
44

1 Leuty spoke in in favor of granting the variance.

2

3 The Board discussed the standards of review and agreed that most had been met. Seeber filled
4 in the “Notice of Decision” form as the members considered each standard.

5

6 Nagler moved, supported by Mihelich, to grant the variance request of Matthew Clysdale, with
7 the condition that the applicant is to obtain the location of the septic tank from the health
8 department to ensure that there is no interference and that it is to be laid out to be in accordance
9 with the application.

10

11 The motion passed unanimously. Seeber filled out the notice of decision form. Short authorized
12 her to sign it on his behalf, due to the remote meeting situation. She indicated that she would
13 mail it to Clysdale and fill in the proof of service.

14

15 **Old Business.**

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17 None.

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19 **New Business.**

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21 None.

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23 At this time, Leuty discussed the email he had prepared and provided to ZBA members, positing
24 it may not be reasonable to consider ground—mounted solar panels as accessory structures.
25 Presently, the Township Zoning Ordinance establishes that ground-mounted solar panels must
26 be treated as accessory structures. This, he said, requires a property owner such as the applicant
27 to obtain a variance in order to retain existing traditional accessory structures and to add solar
28 panels, which are an essential component of an occupied parcel. Leuty reasoned that certain
29 other non-traditional accessory structures such as barns and silos were not counted as accessory
30 structures. Leuty proposed that the ZBA ask the planning commission to consider a text
31 amendment to the solar energy provisions so that they would not be considered accessory
32 structures. The ZBA discussed this.

33

34 Leuty moved to recommend that the ZBA requests that the planning commission considers a text
35 amendment to the solar energy provisions so that they would not be considered accessory
36 structures. Supported by Short. The motion passed unanimously.

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38 **Other matters to be reviewed by the ZBA.**

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40 None.

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42 **Citizen Comments.**

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44 None.

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Correspondence received.

None.

Board Member Comments.

None.

Report of the Planning Commission Member.

Nagler summarized the recent Planning Commission meeting. He said that they are still working on the Master Plan, but they are struggling with getting it to the public. They have been very busy and next month's meeting will be very full.

Adjournment.

There being no additional business, Nagler moved, supported by Mihelich, to adjourn the ZBA meeting. The motion passed unanimously and the meeting was adjourned at 8:00p.m.

Respectfully Submitted,

Robert Mihelich, Secretary of the Zoning Board of Appeals

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2 **Synopsis of Actions**
3 **ZBA meeting May 20, 2020**
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5 Regarding the request for variances from Matthew Clysdale, 579 Nazareth Road:
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7 Variance granted.
8

9 Conditions:
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11 Applicant to obtain location of septic tank from health department to ensure that there is no
12 interference. Layout to be in accordance with the application.
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DRAFT