



500 West Big Beaver
Troy, MI 48084
troymi.gov

Date: April 12, 2023

To: Members of the Troy Zoning Board of Appeals

From: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney

Subject: Variance Request for 944 Marengo

At its February 21, 2023 meeting, the Zoning Board of Appeals (ZBA) considered a variance request to divide a parcel located at 944 Marengo into two parcels, each having 72.61 feet in width and frontage. A variance of 54.78 feet (27.39 feet for each parcel) was needed for this proposed lot split, since Section 4.06 C of the zoning ordinance requires 100 feet of width and frontage for each residential lot. At the conclusion of the public hearing, the ZBA denied the variance request.

The applicant subsequently submitted a second variance request for a proposed lot split of this same property at 944 Marengo, and this item is included on the April 18, 2023 ZBA meeting agenda. The applicant is again seeking a lot split, and has asked for the same width and frontage variance of 54.78 feet (22.39 for one parcel and 32.39 feet for the second parcel). Section 4.06 C of the zoning ordinance requires 100 feet of width and frontage.

ISSUE:

Section 15.05 A 6 of the Zoning Ordinance (Chapter 39) provides:

An application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall not be resubmitted for a period of one (1) year from the date of denial, except on grounds of new evidence not previously discovered at the time the variance was denied or changed conditions found by the Zoning Board of Appeals to be valid.

Because of this unusual situation, the ZBA must first decide whether or not this second variance request for a lot split for the property at 944 Marengo is properly before the ZBA when only two months have passed since the denied variance request.

AUTHORITY:

Under MCL 125.3603, which is Section 603 of the Michigan Zoning Enabling Act (MZEA) the ZBA is authorized to hear and decide questions that arise in the administration of the zoning ordinance. The Michigan Court of Appeals has ruled that a zoning board of appeals has the power to interpret the zoning ordinance which it must administer. *Sinelli v Birmingham Bd of Zoning Appeals*, 160 Mich App 649, 652; 408 NW2d 412 (1987).



500 West Big Beaver
Troy, MI 48084
troymi.gov

PROCEDURE:

A majority of the members of the Zoning Board of Appeals must concur on a decision related to an interpretation of the zoning ordinance under Section 15.03 B. In interpreting the ordinance, the ZBA is required to take in consideration the intent and the purpose of the ordinance, as required by Section 15.04. The ZBA should also consider any applicable rules of interpretation as set forth in Section 2.01.

Following this, the first question is whether the two variances (February and April) are the same. If the ZBA finds the two requests are different, based on the intent of the zoning ordinance, the ZBA can then proceed to hear and decide whether to grant or deny the variance, applying the five criteria set forth in Section 15.04 E. The ZBA should articulate the specific rationale that distinguishes the lot split variance requests in any resolution.

If the ZBA finds the variance request submitted for the April ZBA meeting is the same request as the one submitted for the February meeting, the ZBA should consider whether or not the applicant has “...*submitted new evidence not previously discovered at the time the variance was denied or changed conditions...*” The ZBA should clearly articulate its findings regarding the specific new evidence or changed conditions in a resolution. If the applicant cannot demonstrate new evidence or changed conditions, then the ZBA should pass a resolution declining to hear the matter, based on Section 15.05 A 6 of Troy’s Zoning Ordinance (Chapter 39).

After the ZBA decides whether or not there is new evidence or changed conditions, if the ZBA finds that the applicant has articulated new evidence or changed conditions, the ZBA would then hear and decide the variance based on the five criteria set forth in Section 15.04 E of the zoning ordinance.

We are available to answer any questions that you have about this unique matter.