

**CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING MICHIGAN 48433**

**ZONING BOARD OF APPEALS
DATE: JUNE 2,1998 TIME: 7:30 P.M.**

MEETING CALLED TO ORDER by Chairman Henneke at 7:30 p.m. He asked the recording secretary to call the roll.

MEMBERS PRESENT

Edward Henneke, Chairman
Harvey Workman, Vice Chairman & Secretary
Lynn C. McLean, Township Board Representative

James Sarka
Richard Vaughn

ALSO PRESENT:

Jerald W. Fitch, Building Inspector
Ida M. Reed, Recording Secretary

MEMBERS ABSENT: None

OTHERS PRESENT: Dr. Paul Nickola, Dale Nickola, Engineer Vance Kupisch, from Gould Engineering representing the Nickola Brothers and 1 area resident.

APPROVAL OF AGENDA: Agenda was approved as presented.

APPROVAL OF MINUTES: There were no additions or deletion to the special meeting minutes of April 7, 1998, and they were approved as printed.

VARIANCE REQUEST:

Nickola Brothers variance request of lot sizes in "The Needles Subdivision". (Section 20-701) (Parcel #08-21-200-001).

CHAIRMAN HENNEKE acknowledged a letter that was received from the Nickola Brothers stating they were dropping the open space development concept, and will work from the original plan that was shown to the ZBA on the 7th of April, with some changes.

VANCE KUPISCH from Gould Engineering, representing the Nickola Brothers, addressed the ZBA with their request. He wanted to make this presentation in 4 different parts.

1. He will quickly go over what was presented to the ZBA at the last meeting.
2. Dale Nickola would like to talk about where they have come from since the last meeting.
3. Mr. Kupisch will give a short presentation of a compromised plan.
4. Dr. Nickola would like to make a short presentation.

MR. KUPISCH stated the plat consists of 81 acres and approximately 25 acres of that area is State Controlled Wetland. The Nickola's have done extensive soil test at the site, and have had preliminary discussions with the Health Department. They have received verbal approval from them as to the concept of septic fields throughout the whole area. The Health Department has even gone out

themselves and changed some requirements for five lots. Those particular lots will be able to have standard septic systems.

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They have also been working with the Genesee County Road Commission in regards to having dedicated roads on the site. They have discussed the storm sewer system with the Genesee County Drain Commission. They plan to make changes for controlling the high water table and water run off.

The Nickola Brothers have studied different ways of developing this land to the advantage of not only the people that will be living there, but to the advantage to the Nickola Brothers in their desire to develop this piece of property.

He complimented the Nickola Brothers on the amount of time they have spent on this project. They have made extensive reviews as to the cost of this project. In his opinion the Nickola Brothers have done their homework, and desire to develop a nice subdivision.

DALE NICKOLA stated that he liked the open space development plan, and he appreciated the corporation they received from the township boards when we met with them at the site. Following that meeting he met with contractors, and discovered that this type of development would be very expensive, in comparison to the original plans. The plan is to de-water the site, and intercept the water before it spills over onto Heddy Drive. The ideal situation for an open space development concept is to have sanitary sewers and municipal water. At this location sanitary sewers are not available, and probably will not be available for a very long time.

Originally they planned to sell lots to builders and let them build the homes. Now they plan to work with an individual contractor and take control of how these sites are developed. They will also take control of the beautification of the property.

MR. KUPISCH stated that if they were able to use all the property they could easily put in 132 lots. Because of the wetlands they will only be able to put in 57 sites. They plan to build a swale around the backside of the westerly lots that will drain into the holding pond and then drain off then discharge into the new county drain to the river. The original variance request was for 10 lots. We have redrawn some of the sites, and now we are requesting a variance for lots 41, 44, 45, and 48. We need an interpretation on lots 39, 40 and 49. Lot 11 is where Dr. Nickola lives and we may need a variance for that also.

Mr. Kupisch stated that the strict enforcement of the ordinance couldn't be done because of the Department of Quality Control, and the restrictions they put on the wetlands. The wetland conditions were not caused by the landowner. The railroad might not be the total cause, but they sure helped. The railroad has refused to clean out their drains, and the water has backed up on the Nickola property. We feel that we have secured the public safety by protecting the wetlands. We feel substantial justice will be done if the variance is approved to allow the developer to develop the property under the ordinance.

DR NICKOLA stated that his father purchased the property when the brothers were very young. It has been in the family for 45 years. Their father planned for his sons to someday develop the land. Through the years they continued to improve the land with their eye on the future. They didn't get very excited about the development until a water line was constructed on Seymour Road. They knew the water in that area was salty, and a development was just out of the question without city water. They also waited until the county drain came through. The drain was needed, but the neighbors felt they were being assessed too much, and the Nickola Brothers offered to pay \$36,000 to ensure the drain was completed.

In their agreement with the county they are permitted to drain their entire 81 acres into that drain. Not only did we help ourselves, but we also helped our neighbors.

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They plan to use local real estate agents and local builders. There are those that just want small subdivision lots, and there are people that want a larger piece of property to roam on. In this subdivision there will be both. He thinks it is an ideal situation, and he requested that the ZBA grant their request.

VAUGHN asked if they had considered keep the wetlands for themselves? This is a unique situation.

DALE NICKOLA stated that was one consideration, but if they sold all the lots in front of the wetlands, it would then be landlocked. How would you do it in order to hold title to the property, and still comply with the ordinance.

SARKA asked if they ever considered selling the wetlands to 1 property owner? He also agreed that it was a unique piece of property, but with this proposal you are creating 3 more unique parcels.

DR NICKOLA stated that if they sold the entire wetlands to one individual they would not pay any more for the entire piece than for 10 acres. We would like to make some money off this project, or it would not be worth our time and trouble. One individual would also probably fence it in so it could not be used by anyone else. The wetland is a unique buffer between the residents and the railroad tracks.

DALE NICKOLA stated that if he owned a large piece of land behind 10 neighbors he would have more problems with those 10 neighbors than if it were divided into 4 parcels. Whether it is 1 lot or 4 lots, nothing has changed, and nothing will be able to be changed because of the DEQ. You won't see any change from either side or from the railroad tracks. You can't build back there, but it is a great area to roam and enjoy. It is too nice of an area to be limited to one landowner.

HENNEKE doesn't have a problem with lots 39 and 40, but his biggest concern is with the wetlands.

WORKMAN said that the more he thinks about this request he wonders if there is something bad about this proposal. In this situation he doesn't see where anything else can be done with the land. He has mixed emotions about this, but doesn't see anything bad about allowing this concept. What would be gained by not approving the request? This land can't be used, unless, in the distant future a new political regime gets into power and changes the law. They could decide that we don't care about wetlands, but in the foreseeable future, no one can build on wetlands.

SARKA is afraid we would be setting a precedent, but it is a unique piece of property. He doesn't see it making much of a difference if we are talking about 1 lot or 4 lots. We are dealing with a really unique situation. The wetland is way back in the section, and it isn't like the wetland is right by a main road.

McLEAN stated that the Nickola Brothers are asking for a variance from the ordinance. You have to look at the integrity of the ordinance. They aren't asking for a 20% variance, but they are asking for a 350% variance from the original ordinance. What type of integrity do we have if we approve this request?

McLean asked if L shaped lots could be considered as lots. Do they meet the definition of a lot? He is concerned that the homes could be built in behind one another with this type of setup.

CHAIRMAN HENNEKE asked them to look in the ordinance book under roman numeral II-6. They do show L shaped lots. He asked if the L shaped lots could be reconfigured? Could the lots be fanned out instead of being L shape?

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MR KUPISCH pointed out that the L shaped lots are considered a flag lot, and your ordinance doesn't address flag lots. If they were fanned out instead of being L shaped they wouldn't have access to some of the wetlands.

VAUGHN stated that we are dealing with wetlands. If it were dry usable land we would be talking a different issue.

WORKMAN MOVED, motion seconded by Vaughn to approve the variance request of the Nickola Brothers. The condition on the 3 homes that will be built on lots 39, 40, 41 are to be lined up in such a way that they are in an even pattern from the street, so one home is not built in behind another. The motion to approve this request is due to the uniqueness of property, because of the wetlands. It is not a typical subdivision pattern. The wetland problem was not created by the landowner. We are not bestowing special privileges that are denied other properties similarly situated in the same zoning district. The cost to develop this property any other way would place an unreasonable burden on the landowner. They don't want long fingers of property sticking out and prevent the use of the wetland around them. Yes: Workman, Vaughn, Sarka and Henneke. No: McLean. MOTION CARRIED.

NEXT REGULAR MEETING will be held on Tuesday, September 1, 1998 at 7:30 p.m.

ADJOURNMENT: As there was no further business the meeting was adjourned at 9:30 p.m.

Edward Henneke, Chairperson

Ida M. Reed, Recording Secretary

Harvey Workman,
Vice-Chairman/Secretary