

# APPROVED

## MELROSE TOWNSHIP ZONING BOARD OF APPEALS MINUTES OF JUNE 24, 2020

CALL TO ORDER: Ch. Lee called the meeting to order at 7pm

ROLL CALL: Present were: Ch. Lee, David Beier, Todd Reeves, Bart Wageman, Lyon Stephens, Zoning Administrator, Randy Frykberg, and Recording Secretary, Bunny Marquardt

APPROVAL OF AGENDA: Bart made the motion to approve the agenda for the June 24, 2020 meeting, David seconded. ALL AYES, MOTION PASSED

APPROVAL OF MAY 28, 2020 MEETING MINUTES: Todd made the motion to approve the minutes of the May 28, 2020 meeting. David seconded. ALL AYES, MOTION PASSED

PUBLIC HEARING. Ch. Lee read the following:

SUBJECT: **Case # ZBA #2-2020 Michael Wehrenberg request for interpretation Section 6.0 B 3& 4 and Section 6.0F and applicability to roads**

Randy read the following Request and Background for this case:

In the recent past there has been more than one dock at the end of Hamilton Court. Michael Wehrenberg has requested an interpretation of Section 6.0 R-1 of the Zoning Ordinance.

The Zoning Administrator has ruled that Hamilton Court is not a lot, and Section 6.0B 3 & 4 and Section 6.0F do not apply to the lake end of Hamilton Court. These sections do not apply to end of a road.

On August 12, 2019, Attorney John Turner, representing Ms. Jenifer Tysee, wrote the Zoning Administrator, quoting the above-named Sections of the Zoning Ordinance and requesting an investigation of the use of this road waterfront. After researching the question, the Zoning Administrator replied:

*The word "Lot" excludes any adjoining street. "Street" is defined as a public or private street, road, or easement. Therefore, this rule does not apply.*



On February 16, 2020, Mike Wehrenberg wrote the Zoning Administrator questioning the meaning of the Zoning Ordinance residential regulations for boat docks. This began a series of 20 email exchanges (attached). The 2:28PM, Monday February 17 email reply from the Zoning Administrator stated:

*According to the Melrose Township Zoning Ordinance, the word "Lot" excludes any adjoining street. "Street" is defined as a public or private street, road or easement. Therefore, Hamilton Court is not a lot and the rule does not apply.*

On Thursday, February 20, the Zoning Administrator wrote:

*Hamilton Court, a private road (with a tax ID # like even many public roads also have) is not exempt from the Melrose Township Zoning Ordinance. By Ordinance definition, Hamilton Court is not a lot and thus Section 6.0 B) 3 & 4 do not apply, the number of docks and number of motor powered craft allowed per lot width. Additionally, for the same*

*reason, Section 6.0 F) 1) does not apply either because there is no side yard for a street. This Section refers to side yard setbacks and dock length.*

In response to Mr. Wehrenberg's question about when the Board of Trustees made a motion that a parcel of land in the R-1 zoning district that has a private road is exempt from Sections 6.0 B) 3 & 4, the Zoning Administrator replied:

*No resolution by the Trustee to exempt private roads from the R-1 Regulations is required. The Zoning Ordinance regulations of Section 6.0 B) 3 & 4 and Section 6.0 F do not apply as explained in previous Emails.*

*One of the duties of the Zoning Board of Appeals is to "Hear and decide upon appeals for the interpretation of the provisions of the Ordinance." Therefore, an application to the Zoning Board of Appeals would be the Next step to proceed.*

On March 9, 2020 the Zoning Administrator informed, by the following note, the ZBA members and recording secretary that another item would be added to the scheduled April 1, 2020 meeting:

Randy then stated that due to the following Ordinance definitions, I do not believe that the dock regulations do not apply. He read the Quotes from the Ordinance:

"Lot

*A parcel of land exclusive of any adjoining street which is or may be occupied by one (1) main building or use and its accessories, including the open spaces required by this Ordinance, but not necessarily conforming to the platted lot lines. The word "lot" shall include plat or parcel. Except as otherwise specified in this ordinance, Site Condominiums shall conform to all applicable*



*regulations of this ordinance for the zone in which they are located "*

"Street

*A public or private street, road, easement or other means of gaining access to a parcel, lot, or condominium site.*

*Private: A means of gaining access to two or more lots or parcels of property that will be owned and maintained by an association, individual or group of property owners that is not intended to be open to use by the general public. A private street shall contain a minimum sixty-six (66) foot right-of-way with a grade not to exceed eight (8) percent."*

A September 1941 warranty deed indicates that the land known as Hamilton Court is held in common with all owners of land abutting the Court and also an undivided interest and title in common with the owners of land abutting an adjoining alley.

Ch. Lee then asked the applicant, Mike Wehrenberg was to speak: He stated that the Rules and Regulations of the R 1 Zoning District (not just Hamilton Court) were very confusing and was asking for an interpretation of Section 6.0B 3&4 and Section 6.0F and how these apply to roads.

Mr Wehrenberg presented. the Board and the Audience with a slide show presentation. A copy of his presentation is attached. He stated in his summary that "The Zoning Ordinance document itself clearly treats all land in the R-1 District equally and any exemption to that interpretation are not documented and have notable ramifications."

Ch. Lee then asked for those in support and only Haggard's Plumbing and Heating answered by mail. Bill Wehrenberg spoke in favor

Ch. Lee then asked for those opposed: Tim Ferrel from 3500 Hamilton Court since 2011 stated it is a private road and always have been 2 docks there and it should stay that way. Then David Loman stated his family has been there since 1963 and there have always been 2 docks there and have a harmonious group but not now.. Mark Banks's, (a year around resident since 1998) family has been there over 50 years and have always been 2 docks there and this is an emotional issue and now there are too many boats there and people are taking advantage of this situation. Eric Loman spoke and stated his family has been there since 1963 and always been 2 docks there and Mr Wehrenberg knew there were 2 docks there when he purchased the property. Steve Peck then spoke and said he has taken care of this property for 52 years and always two docks were there. "I don't get it."



In rebuttal,, Mr Wehrenberg stated Hamilton Court is a piece of a puzzle in the Zoning Ordinance.

Ch. Lee Read from the copy of the deed dated Sept 3, 1941.

Mr. Lee stated " Parcels are not lots as lots can be built on" and stated that the Charlevoix County Road Commission said road ways are not lots but parcels. Bart commented that in the definition of lot it states a lot may be other things. David agreed that all lots are parcels but not all parcels are lots. Bart went on to say in his opinion we interpret the ordinance for what it says, not what it doesn't say.

Mr. Wehrenberg stated that in 6.0 of the Ordinance it states land or building and Randy replied that uses are on Lot excludes street and this 80 ft. does not meet the definition of a lot. Lyon added this is a private road with a tax ID number and David added Hamilton Court is a parcel of land not a lot.

**David Beier made the motion that the Zoning Board of Appeals agrees that Section 6.0 of the ordinance does not apply to any street (by definition) in Melrose Township. (Randy stated to Mike in a text message dated Feb.. 16,2020 that Hamilton Court is not a lot and the rule does apply.) Todd seconded. ALL AYES, MOTION PASSED**

REPORT FROM PLANNING COMMISSION: Bart reported the PC met on June 1 and approved a mass gathering permit for a triathlon in the village, It now goes to the Township Board for approval.

NEXT MEETING IS WED. JUNE 1, 2020 AT 5PM.

MEETING ADJOURNED AT 830PM.

Recording Secretary: Bunny Marquardt

Date: 7-1-20

ZBA Secretary: Todd Reeves

Date: 7-1-20