

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
Minutes of Regular Meeting held Thursday, July 27, 2017

Call to Order

Chairperson Bowen called the meeting to order at 7:00 p.m. at the Whitewater Township Hall, 5777 Vinton Road, Williamsburg, Michigan.

Pledge of Allegiance

The Pledge of Allegiance was recited by all.

Roll Call of ZBA Members

Members Present: Bowen, Halstead, Lake, Benak, Hooper

Members Absent: None

Others Present: Zoning Administrator Dennis Habedank, Gerard Engler, Tim Shaffer

Set/Adjust Agenda

The agenda was set as prepared.

Declaration of Conflict of Interest

None

Approval of Minutes of January 26, 2017

Motion by Benak to approve the regular meeting minutes for 01/26/2017; second by Halstead. On voice vote, all those present voted in favor, none opposed. Motion carried.

Scheduled Public Hearing: ZBA #17-01

Gerard Engler, 240 Island View Drive, Traverse City, MI, 49696, property id: 28-13-670-012-00, in the R-1 Residential District, is requesting a variance from Article 12 of the Whitewater Township Zoning Ordinance. Specifically, related to the house, the applicant is requesting a six foot variance of the required fifteen foot of the side yard setback. Specifically, related to garage, the applicant is requesting permission to encroach into both side yard setbacks and the front yard setback.

Open Public Hearing on ZBA #17-01: The public hearing was opened at 7:03 p.m.

Zoning Administrator Presentation

Dennis Habedank noted the following:

- He was the zoning administrator here a few years ago. He is currently the full-time ZA at Green Lake Township but is trying to help Whitewater Township with this.
- The township received Mr. Engler's request in June. He has a definite problem with his home. It is a flat roof. He is asking to extend the eaves out so the roof does not leak, a better roof, and the walls are protected.
- Normally, with variances, we are looking at a problem with the land itself. In this case, the problem is with the way the house was designed. He bought it in 2005. It has been in existence since about 1973. There are a couple areas where the ZBA could think about hardship in this case.
- Engler also applied for a variance for his garage, but Habedank stated he cannot see the board's ability to grant in that case. There is nothing structurally wrong with the garage

that he can see. The trees have been removed. He is just going to have to keep stuff off the roof to keep it from leaking.

- If the ZBA were to grant a variance, it would have to be some type of hardship variance. If you decide to grant a variance for the roof on the home, you have to take into consideration you are giving him a 5- or 6-foot intrusion into the side yard setback. If something happens with the home in particular and it goes away, that variance is still there for the next person, who conceivably could build in the right place on the lot and not need a variance. Conditions might be in order, i.e., if the house goes away, anything else built there has to conform to the current setback conditions in the township.

It was clarified through discussion that this variance would be for this house only. If the home goes away, whoever builds again, even if it is Mr. Engler for whatever reason, any new structure has to be built in compliance with the side yard setbacks.

Bowen stated the variance for the garage has been withdrawn.

Benak noted that it was not legally noticed, so we cannot consider it.

Habedank said that he told Engler that he does not believe the garage qualifies for a variance. At this point, Engler is comfortable with that.

Bowen asked if the work would be done yet this summer.

Mr. Engler replied: In hopes, yes.

Petitioner Presentation

Mr. Gerard Engler, 240 Island View Drive, stated the following:

- The zoning administrator has covered the importance of replacing the roof on the house. It is the original roof, approaching 50 years old, has been deteriorating. It is a rubber membrane; it sprung two leaks last year. I do not want to replace it with a flat roof. I want to replace it with something that pushes the weather away from the side of the house. It is a post and beam design. The walls are not weightbearing. There is no overhang on the existing roof. Stuff comes off the roof and sticks to the side of the house and freezes to it.
- I asked for the variance on the garage because there is a set of stairs that goes down to the house. The house sits well below the garage. The stairs were not well designed. They were put in with landscaping lumbers and concrete. All the timbers are slanted now, out of position, and very slick in the wintertime. I have to shovel the stairs by hand. I would like to be able to cover the stairway all the way up. That is why I decided to throw in the garage as part of redoing the whole thing. I heat with wood, so I haul wood up and down the hill. I thought of cantilevering off the garage to have a covered walkway all the way down to my house. It is a long-term safety issue as I get older. I have to replace the stairs. When I do it, I would like to do it with a covered stairway so I am not shoveling snow all winter long and they are designed and built safely.

Discussion followed regarding the garage being in conformance, placement of a covered walkway, the fact that the garage is not being considered tonight, the goal of replacing the roof on the house.

Mr. Engler stated he lives in the house year-round.

Report on Site Visits

ZBA members shared their site visit observations and acknowledged the problem that exists with the roof.

Engler clarified that he is looking for a 5-foot variance. The overhang is 6 feet. On the site map, the architect shows that it is 10 feet off the property line.

Habedank noted that when he reviewed the plan, it appeared Engler needed a 6-foot variance to accomplish what he is intending to do. If he can do it with less than that, it is within the ZBA authority to say if you only need 5 feet, you get a 5-foot variance. You should not grant more than what he actually needs.

Correspondence: None received.

Public Comment in Favor of Appeal: None

Public Comment in Opposition to Appeal: None.

Any other Public Comment relating to the Appeal

Tim Shaffer, 5309 Moore Road, stated he can see where the walkway would be a concern and asked what kind of walkway is planned.

Engler stated it will probably be stamped concrete so it looks like stone.

Hooper clarified that all we are talking about tonight is the house; Bowen confirmed.

Close Public Hearing on ZBA #17-01: The public hearing was closed at 7:24 p.m.

Discussion of Appeal

Bowen stated that he understands the need for the overhang on the house. He is also in agreement that, if we do grant this, it stays with this structure only. If 5 feet is the minimum that he needs to be able to protect his house, then Bowen is good with granting that.

Benak stated we have the appeal in front of us because the applicant intends to put a new roof on. Once we grant the variance, we are granting a variance on the side yard setback. If the applicant decides to push the walls out and make the home bigger, are we okay with that? Because that is not what we are here for today. If we agree to this variance, is that something that needs to be spelled out as a condition, such as rescinding of the variance for the setback to the original if the home gets demolished?

Hooper stated that if he decides to push the whole house out the whole 5 foot and not have an overhang at all, then he would have to come back. We are granting a variance just to protect the siding of the house from the weather. It is going to go with the structure. If the next guy says I can go all the way out, that is where we are in a little bit of a gray area. We have to word it so that that will not take place. We have to cover that this is strictly for a roof overhang only.

Benak stated her own feelings are that, by not granting this, it would become a hardship on him because he would have to replace that siding with something that would not mold or rust, and there would be constant maintenance, as there is already.

Hooper stated he thinks what he is asking for is reasonable, but if we grant this, we have to make sure we are not opening up the door for everybody else to come in and ask for the same thing. We have to make sure he has a hardship.

Habedank stated you are absolutely right. You do not want to open the door for anybody else, granting a hardship variance. Maybe the neighbor next door wants to do a similar thing. In this case, you have plenty of evidence to show a reason why you would grant the variance on the home as opposed to granting it on the land. That is why we do not grant variances, generally speaking, to property for somebody's own personal problem. In this case, you have the water issues. That is something reasonable to consider. The intrusion of the corner of that roof is all you are approving. Some people have the feeling that when you intrude into the setback area with whatever variance you grant, that moves the property line, but it does not. Tonight, if you approve, you would be approving the intrusion of the roof only. Everything else is still where it needs to be.

Hooper inquired of Habedank, in his opinion, if we grant this with the conditions we have, we are really not opening up any doors.

Habedank replied he does not think so, because the ZBA has plenty of evidence to say this is a hardship and it needs to be fixed.

Brief discussion ensued regarding the damage which has been done by water running down the siding due to no overhangs.

Findings of Fact

Per Habedank's Proposed Finding of Fact/Variance Request, a finding of practical difficulty requires the following to be demonstrated by the applicant:

1. Granting the variance will not be contrary to the public interest and will not be contrary to the spirit and intent of the Ordinance.
2. Granting the variance shall not permit the establishment within a zoning district of any use which is not permitted by right within the district.
3. Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township.
4. There are practical difficulties on the site which unreasonably prevent the owner from using the property for a permitted purpose without presenting an excessive burden and the practical difficulty not resulting from any act of the applicant.
5. The variance will do substantial justice to the applicant, but the decision shall not bestow the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity which may endanger the public health, safety or welfare.
6. The requested variance is the minimum necessary to permit reasonable use of the land.
7. The practical difficulty is not self-created.

The proposed findings were discussed and adopted.

Habedank raised the issue of a pitched roof possibly exceeding the township's building height limitations. He stated that is something he was not able to determine when he was there. Depending on the pitch, he might need to ask for a height variance. Habedank does not think what he has designed right now is going to affect the height of the building that much.

Discussion followed.

Conclusion

Mr. Engler needs a variance to be able to protect the siding on his house for years to come. The reasons for this conclusion are the site visits, through discussion of the building, and the presentation from Mr. Engler and the presentation from the zoning administrator.

Motion

Motion by Lake, second by Halstead, to approve the 5-foot variance in the side yard setback for the purposes of the northwest corner of the roof to intrude into the setback area. This variance is for the existing house only. There was no further discussion. **Roll call vote: Bowen, yes, approval of this variance as said; Benak, yes; Halstead, yes; Lake, yes; Hooper, yes. Motion carried.**

Mr. Engler will be provided with the decision in writing.

Other Matters to be Reviewed by the Zoning Board of Appeals

Correspondence Received: None

Zoning Board of Appeals Members: None

Report of Planning Commission Representative

Hooper reported that they are still working on the ordinance. They have had a couple public hearings on things they have changed. There is another one this month on the commercial district. They are going through the entire ordinance and trying to clarify things and get it to the point that they can send it off for recodification. They have had a couple extra meetings trying to get through it. They are making progress. Hooper stated they are trying to make it easier to read and to organize it in a way that almost anybody can come in and understand what they can do with their property.

Benak added that one taxpayer came in who saw the postings in the newspaper, and he obviously was around during the time when the big push was made, possibly in 1999, to change the ordinance completely. He was concerned about outside people coming in and trying to make changes. She stated she told him we are just organizing and correcting things that need to be corrected, updating the law. No big sweeping changes are happening.

Brief discussion followed.

Report of Township Board Representative

Benak stated there is not much happening at the township board meeting. The second meeting in July was cancelled due to lack of agenda items. She has never seen it so slow in the township. The renovations of the fire station are about to begin, which is very exciting. Everybody got a survey in their tax bill regarding medical marijuana. Surveys were also sent to renters and voters who do not get a tax bill. Over 200 have been returned so far. We are looking for what the

township citizens would like to do with the new law that is going to be enacted in December, which allows for five different business licensures for medical marijuana. Benak described the survey document and noted there have been a lot of comments. The possibility of holding a town hall style meeting where we invite a pro person and a con person to speak and invite the township people in to listen and ask questions has been brought up. Benak noted that the law says that if a township does not enact an ordinance, those licenses will not be issued in your township. Benak encouraged people to turn in their surveys; we are listening.

Lake expressed concern that the town hall meeting should be limited to township residents.

Benak also reported that the township is still looking for a new zoning administrator.

Report of Zoning Administrator

Habedank supplied further information regarding the new Medical Marijuana Facilities Licensing Act.

Discussion followed.

Adjournment

Motion by Hooper to adjourn; second by Bowen. On voice vote, all those present voted in favor, none opposed. Meeting adjourned at 8:14 p.m.

Respectfully submitted,

Cheryl A. Goss
Recording Secretary