

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING OF January 24, 2019
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7:08 p.m.

Roll Call: Bowen, Halstead, Hooper, Shaffer

Absent: Benak, Lake, Alternate Garza

Also in attendance: Recording Secretary MacLean

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Approval of Minutes:

Motion to approve meeting minutes of November 29, 2018, as adjusted by Hooper, second by Bowen. On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

- A. Public Hearing on Appeal #19-001. Pat and Lori Lannen, 10101 Miami Beach Rd., Williamsburg, MI 49690, is requesting a dimensional variance. Parcel #28-13-310-008-00 is in the R-1 (Residential) Zoning District.
 - a. Open Public Hearing on Appeal #19-001 at 7:12 p.m. for Pat and Lori Lannen, parcel #28-13-310-008-00 at 10101 Miami Beach Rd, Williamsburg, Michigan. Requesting a dimensional variance of Article XII, Section 12.11 – Schedule of Regulations – R-1, Minimum Side-yard setback and minimum rear-yard setback. Requesting a side-yard setback variance of 8’3” on the east side and a 28’6” variance rear-yard (road side) setback from the required 15’ side-yard setback and 30’ rear-yard setback for construction of a garage to be attached to exiting home.
 - b. Zoning Administrator Presentation: The legal notice of public hearing was posted in the Record Eagle January 6, 2019. Notices were also sent out to eleven property owners within 300 ft. of the property. Summary of staff report: Ten variances have been granted on Miami Beach road for various setbacks. Water run-off has been a concern. Noticed while driving through the area, and even though it is not a busy road, there is a sign indicating it is a deaf child area. Need to grant a variance with the least amount of encroachment into the setbacks.
 - c. Petitioner Presentation: Pat Lannen: Thank you for your time and attention. It is a standard two car garage plus storage. Regarding the safety issue of a deaf child. There is no deaf child in the area. There is 25’ from the garage to the road. Water run-off will be completed as the house is with rock. Trying to be mindful of the plan and layout of the house and land. Many people in the area have been granted variances. Moving the addition further in from the side yard setback would cover the entrance and possibly a window.
 - d. Report on Site visits: Halstead: The shed will be moved to be within the set back or removed.
Bowen: The garage is going to be very close to the road.
Hooper: There is one similar on it is about 25’ from the garage to the road as this one would be.
Hooper: It is a 66’ road right of way.
 - e. Correspondence: Haggard Plumbing and Heating has no problem with granting the variance. One neighbor verbally indicated support of the variance.
 - f. Public speaking in favor of appeal None.

- g. Public speaking in opposition of appeal: None.
- h. Anyone wishing to speak on the appeal None.
- i. Close Public Hearing on Appeal #19-001 at 7:37 p.m.
- j. Discussion of appeal: Hooper: Do not think it is a problem with the rear yard setback. It is still quite a bit off the road. Do have a problem with the side yard setback. It can be moved over.
Bowen: Wrestling with this being self-created since they are the ones who built the house.
Hooper: We have done the rear yard setback. We have not this on the side yard setback. Covering the door may not be optimum but it is do-able and would help with how much of a variance is needed.
Bowen: One of the questions we must address is: "Is it the minimum that is needed?".
Halstead: It could be moved over, over the door.
Shaffer: Concerned with the side yard setback for safety in getting medical or fire equipment through.
Bowen: There are work arounds to not having to go through the garage to get into the house if it were moved.
Shaffer: You can see where there is a need.
Hooper: Our responsibility is to grant the minimum necessary.

k. Findings of Fact:

To obtain a nonuse (dimensional) variance, the applicant must show that a practical difficulty exists on the property by demonstrating that the applicable following review standards are met:

- 1. Granting the variance will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance.**

Observing the spirit of the Ordinance means that the Zoning Board of Appeals understands the potential effects one or several variances could have on the effectiveness of the Ordinance. The fundamental purpose is to promote the health, safety, and general welfare of the inhabitants of the Township.

To be determined by the Zoning Board of Appeals. YES NO

- 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.**

Single family dwellings are a permitted use within the R-1 Zoning District. These dwellings can include an attached garage or detached.

To be determined by the Zoning Board of Appeals. YES NO

- 3. Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township.**

The promotion of health, safety, and general welfare of the inhabitants of the Township is accomplished through: Securing safety from fire and other dangers and providing for safety in traffic, adequacy of parking and reduction in hazards to life and property (Article II Section 2.10(2)). It would be appropriate for the applicant to demonstrate how

they will safely exit the proposed garage. The measurement from the eave is 1'6" away from the rear property line, which is located along Miami Beach Road (a private road). There are several other structures in close vicinity– from my best aerial measurement they appear to be at least 5'-6' from the property line/ROW.

To be determined by the Zoning Board of Appeals. YES NO

- 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.**

Meeting this standard requires the requested variance be related to the characteristics of the property and not to the personal situation of the applicant.

As stated earlier, the request for this variance is based upon **practical difficulty** due to unique conditions and circumstances of the land, which must be determined by the Zoning Board of Appeals. The applicant states, "The house was built in 2003 without a garage. Because of the high water table there is no basement or crawl space for storage. The garage cannot be built to the west of the current cement driveway because of the underground 2 stage septic tank with electric pump and drain pipes to the community system. The new natural gas line is also on the west side of the lot. Moving the garage to the west side would also cover the entrance into the house." In this case practical difficulty may be identified as a high water table.

To be determined by the Zoning Board of Appeals. YES and NO

- 5. The variance will do substantial justice to the applicant, but the decision shall not bestow the property special development rights not enjoyed by the 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.**

Property owners are given certain rights to use their property within the limits allowed by the Ordinance. There are several others who have been granted a variance to construct an attachment or accessory building within the permitted setbacks in this neighborhood. It is also important to note that each variance granted on a case by case basis –because one variance is granted does not mean that another be granted in the same district. The current appeal must be explored to ensure that it will not adversely impact properties in the vicinity (refer to standard 3).

To be determined by the Zoning Board of Appeals. YES NO

- 6. The requested variance is the minimum necessary to permit reasonable use of the land.**

Section 18.08 (B) states: No more than the minimum variance from the terms of the Ordinance shall be granted which is necessary to relieve the practical difficulty or necessary hardship.

To be determined by the Zoning Board of Appeals. YES and NO

- 7. The practical difficulty is not self-created.**

The lot is part of a platted subdivision: Lot 8 Clearwater Beach Subdivision. This platted subdivision was created on September 19, 1960. The lot was purchased by the applicant in 1999. Due to the 50' setback from the water and the size of the lot (Lot Dimensions: 70' x 150' (10,500 ft²) approximately 0.241 acres of land) there is not a large building envelope.

To be determined by the Zoning Board of Appeals. YES and NO

Determining the answers to the seven (7) review standards should give us a well-supported foundation in regards to approving or denying the requested variance; as well as a well-supported foundation in case of an appeal to Circuit Court. Decisions related to zoning are rarely easy, and they are not usually a matter of right and wrong. The duties of the Zoning Board of Appeals require a balancing of the needs of the community and the rights of a property owner.

It is also important to note: Each variance granted shall become null and void unless the provisions of the variance have been utilized by the applicant within one (1) year after granting of the variance. An extension, not to exceed one year may be granted upon request of the applicant (Section 18.80(C)).

Based on the seven questions.

As a group we seem to be in consensus that we have done similar variances in the area.

- l. Conclusion: Grant a variance to approve the request for the rear yard setback. Not approve the side yard setback variance. There is sufficient space for the garage without encroaching on the side yard setback. You can conform without a variance.
Zoning Administrator Wolf notes that the fire chief indicates the emergency vehicles require a minimum of 10'.
- m. Reasons for Conclusion: Rear yard setback is similar to other variances and garage settings in the area. Side yard setback is very close.
- n. Based on the findings of fact as presented.
- o. Decision: Grant rear yard setback. Not grant the side yard setback.
- p. Motion by Hooper, second by Bowen to grant the request for a rear yard setback variance of 28'6" and to not grant the requested side yard setback on the ZBA Appeal #19-001.
Roll call vote: Bowen-Yes; Halstead-Yes; Hooper-Yes; Benak-NA; Shaffer-Yes; Lake-NA; Garza-NA.
Motion carried.

Other Matters to be Reviewed by the Zoning Board of Appeals:

- 1. Correspondence Received - None
- 2. Election of 2019 Officers:
Hooper recommends that we keep the officers the same, second by Halstead. Bowen accepts to continue as Chair. Halstead accepts to continue as Vice Chair. Lake is not present but he can deny at the next meeting.
Roll Call vote: Bowen-Yes; Halstead-Yes; Lake-NA; Hooper-Yes; Benak-NA; Shaffer-Yes; Garza-NA.
All in favor. Motion carried.
- 3. Annual review of ZBA By-laws. No changes.
Motion by Halstead, second by Shaffer to keep the by-laws the same. All in favor. Motion carried.

4. Resolution ZBA19-01, Fiscal year 2019/2020 Regular Meeting Dates.

Motion by Bowen, second by Hooper to adopt the 2019/2020 meeting Resolution ZBA 19-01.

Roll call vote: Lake-NA; Hooper-Yes; Benak-NA; Shaffer-Yes; Garza-NA; Bowen-Yes; Halstead-Yes.

All in favor. Motion carried.

Planning Commission Representative report: Hooper: Recodification moving forward. We have been asked about Event Barns. We feel a need to address the issue of event barns because someone, at some time, is going to want one and we just want to be ready. They help to maintain large tracts of land. Each PC member is doing a short bio for the April Newsletter. Maybe the ZBA will be asked to do that also.

Township Board Representative report: Benak: NA

Zoning Administrator report: Working on getting a survey together regarding event barns. We are just looking for feed-back at this point. Master Plan is due for a review in the next year. Putting out a monthly e-newsletter.

Decision form and Resolution signed by all present members.

Next regularly scheduled meeting will be February 28, 2019, if it is necessary.

Adjourned at 8:35 p.m.

Respectfully submitted by
Recording Secretary
Lois MacLean