

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING April 25, 2019
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7:00 p.m.

Roll Call: Benak, Bowen, Halstead, Hooper, Alternate Garza

Alternate Shaffer

Absent: Lake

Also in attendance: Recording Secretary MacLean, Zoning Administrator Wolf

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Approval of Minutes:

Motion to re-approve meeting minutes of January 24, 2019, as amended by Bowen, second by Halstead . On voice vote, all in favor. Motion carried.

Motion to approve meeting minutes of March 28, 2019, by Benak, second by Bowen . On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

- A. Public Hearing on Appeal #19-003. Bruce and Jennifer Brown, 8955 Skegemog Point Road, Williamsburg, Michigan, are requesting a dimensional variance. Parcel is in the R-1 Zoning District. Parcel #28-13-123-006-02.
 - a. Open Public Hearing on Appeal #19-003 at 7:03 p.m. Bruce and Jennifer Brown, 8955 Skegemog Point Road, Williamsburg, Michigan, parcel #28-13-123-006-02, requesting a dimensional variance of 10' to construct a detached garage within the required 15' side yard setback.
 - b. Zoning Administrator Presentation: The legal notice of public hearing was posted in the Record Eagle April 7, 2019. Notices were also sent out to 21 property owners within 300 ft. of the property.
Summary of staff report:
The request for 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, "Our lot received a substantial hit from the August 2015, storm and lost dozens of mature trees. This setback variance would allow us to keep ~8 trees that are ~50-75 feet tall."
If the Board of Appeals decides to grant the variance they would be granting a variance to Article XII, Section 12.11 – Schedule of Regulations – R-1 Minimum side-yard setback.
In this case we are dealing with a Non-Use (Dimensional) Variance request.
Pictures provided to members.
Could it be moved? Could it be made smaller? Personal preference? 26x56 building.
 - c. Petitioner Presentation: Bruce and Jennifer Brown. It is a pole building. We lost a lot of trees in 2015. Prefer not to take the trees down. Share pictures of the views. We have been trying to save the trees. We've had the forester out to help us save the trees. The neighbor does not want to see the building. Shifting the building would make us have to remove the trees. Hemlock and maple trees are in this area. It was a vacant lot when first purchased after the 2015 storm.
Working with a builder.
Trying to put it where the fewest number of trees have to be removed.
Halstead: Making a non-conforming structure can cause a problem in the future for selling and doing anything different.

d. Report on Site visits:

Hooper: Move toward the road and you can comply with zoning. Reduce the size of the building. It can fit on the lot without the variance. It can set precedence.

Halstead: Looks like it could be built without a variance.

Bowen: There are two nice trees and six smaller trees. There is ample space to put the building in. Empathize but we have to follow the rules.

Benak: There is a really nice open area but by the rules we have to go by it is considered self-made. You can build within the setbacks.

e. Correspondence: Haggard Plumbing and Heating has no problem with granting the variance.

Concerned and affected neighbor: Does not approve. Does not want to look at it out the door.

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 #19-003 at 7:27 p.m.

j. Discussion of appeal: We are bound by specific rules.

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.**

Accessory structures are a permitted use within the R-1 Residential Zoning District when the structure is located on the same lot or a lot contiguous to the primary building. There is a primary building on this lot.

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.

This indicates that if approved, the variance will not create an unsafe condition - it also applies to others who might be affected by the variance, such as neighboring property owners. It is appropriate for the Zoning Board of Appeals to take the comments from the public into consideration to determine whether or not the variance may adversely affect nearby properties, zoning district, or the Township. A letter of support and also a letter that did not support the request were received.

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 a 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, "Our lot received a substantial hit from the August 2015 storm and lost dozens of mature trees. This setback variance would allow us to keep ~8 trees that are ~50-75 + feet tall." The location of the septic/drain field is shown on the plan. In this case the practical difficulty may be identified as tree loss due to the storm of 2015.

Would the removal of the trees have a negative impact on the property? I do not believe the removal of the trees would impact soil erosion due to the distance from the water. This could be viewed as the variance being requested due to the personal preference of the applicant.

To be determined by the Zoning Board of Appeals. YES ____ 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. Have there been any other variances granted in this area? 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. There are other properties in the area that have additional accessory structures. Due to the tree coverage this structure would be more visible from the road.

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. The size of the proposed structure on the application states 1,240 sq. ft – the site plan shows a 26' x 56' (1,456 sq. ft) structure – what is the correct size? What is this going to be used for/could it be made smaller to fit the building envelope/for a lesser variance?

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

7. The practical difficulty is not self-created.

The applicant states, "Our lot received a substantial hit from the August 2015 storm and lost dozens of mature trees. This setback variance would allow us to keep ~8 trees that are ~50-75 + feet tall."

To be determined by the Zoning Board of Appeals. YES ____ NO It is a personal preference

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.

- i. Conclusion: Deny.
- m. Reasons for Conclusion: As discussed. Applicant can still use the property without the variance.
- n. Based on the findings of fact as presented.
- o. Decision: Deny variance.
- p. Motion by Bowen, second by Halstead to not grant the request for a non-use variance to construct a detached garage within the 15' setback on ZBA Appeal #19-003.
Roll call vote: Halstead-Yes; Hooper-Yes; Benak-Yes; Shaffer-; Lake-NA; Garza-Yes; Bowen-Yes.
Motion carried.

Decision form and Resolution signed by all present members.

Scheduled Public Hearing:

- B. Public Hearing on Appeal #19-004. Suzanne Conant, 8032 Lakeside Trail, Williamsburg, Michigan, is requesting a variance to expand a nonconforming structure. Parcel #28-13-430-003-00.
- q. Open Public Hearing on Appeal #19-004 at 7:44 p.m. Suzanne Conant, 8032 Lakeside Trail, Williamsburg, Michigan, is requesting a variance to expand a nonconforming structure. The existing structure is within the 15' side-yard setback in the Residential R-1 Zoning District. The proposed additional would expand the nonconforming structure by 80 sq. ft.
- r. Zoning Administrator Presentation: The legal notice of public hearing was posted in the Record Eagle April 7, 2019. Notices were also sent out to 12 property owners within 300 ft. of the property.
Summary of staff report:
The request for 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, "We would like to add on to the existing entryway for safety concerns. Currently the entry door opens to the basement stairs with little room to maneuver around the door. Also, the stairs are small, steep and you must duck when going down the stairs. This addition would allow more footage away from the

stairs to enter safely. It would also give us the space to correct the stairs to current building codes. The foundation was poured in 1969, prior to current set back ordinances.”

If the Board of Appeals decides to grant the variance they would be granting a variance to Article IV Section 4.15 Extension of Nonconforming Use or Structure.

Believe it would be safer for the occupants. Would be able to bring the steps up to current code.

- s. Petitioner Presentation: Suzanne and Paul Conant. Asking just to add a small addition. It will structurally make the house more appealing. The whole slanted part will be removed and add another 8x10 straight toward the drive way. The peak will match the current house. House was built before zoning was established. Want to make the stairs larger for safety (will bring to building code). This is the main entrance.
- t. Report on Site visits: Bowen did see in the window and could see that the height was a problem. Benak: The addition does not encroach any further into the setback. Hooper: It is an existing non-conformity so it must come before the ZBA.
- u. Correspondence: Haggard Plumbing and Heating has no problem with granting the variance. Letter of support received by neighbor, Thomas and Sheila McClure.
- v. Public speaking in favor of appeal None.
- w. Public speaking in opposition of appeal: None.
- x. Anyone wishing to speak on the appeal None.
- y. Close Public Hearing on Appeal #19-004 at 7:58 p.m.
- z. Discussion of appeal: Can see that the stairs are a problem. Will make is safer.
- aa. 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.

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.

This indicates that if approved, the variance will not create an unsafe condition - it also applies to others who might be affected by the variance, such as neighboring property owners. It is appropriate for the Zoning Board of Appeals to take the comments from the public into consideration to determine whether or not the variance may adversely affect nearby properties, zoning district, or the Township. A letter of support was received from the neighbors directly to the east (8016 Lakeside Trail). The addition will be built outside of the setbacks/will not further encroach upon the neighbors/fits in with the character of the surrounding neighborhood.

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 a 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, "We would like to add on to the existing entryway for safety concerns. Currently, the entry door opens to the basement stairs with little room to maneuver around the door. Also, the stairs are small, steep and you must duck when going down the stairs. This addition would allow more footage away from the stairs to enter safely. It would also give us the space to correct the stairs to current building codes. The foundation was poured in 1969, prior to current set back ordinances." In this case, practical difficulty is the structure was built prior to the Zoning Ordinance (1972)/before setbacks were established. The real estate summary sheet confirms this being built in 1971.

To be determined by the Zoning Board of Appeals. YES 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. This variance will bring the current structure up to code, and it safer for the occupants. Have there been any other variances granted in this area? 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.

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. The size of the proposed structure on the application states 80 sq. ft; this addition would allow more footage away from the stairs to enter safely. It would also give us the space to correct the stairs to current building codes.

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

7. The practical difficulty is not self-created.

The foundation was poured in 1969, prior to current set back regulations. In this case the Zoning Ordinance has created the problem.

To be determined by the Zoning Board of Appeals. YES 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.

bb. Conclusion: It seems reasonable.

cc. Reasons for Conclusion: They are doing the minimum necessary. Zoning created the problem.

dd. Based on the findings of fact as presented.

ee. Decision: Approve because zoning created the nonconformity, creating a practical difficulty, zoning was established in 1972, will make the stairs safer.

Motion by Benak , second by Bowen to grant the request for a non-use variance to expand the nonconforming structure by 80 sq. ft. because zoning created the nonconformity, on ZBA Appeal #19-004.

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

Decision form and Resolution signed by all present members.

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

Correspondence Received: - Wolf received an email that there may be a case coming up. Waiting for the application to come in.

Planning Commission Representative report: Hooper: Waiting on info on recodification. Working on various items in the mean time.

Township Board Representative report: Benak: Newsletter went out.

Would like to intro the ZBA members in the July newsletter.

Clean-up day June 8.

Supervisor Popp is on temporary leave. Deputy Supervisor is helping with office type work.

Approved a preliminary conceptual plan for upgrades at the park to expand boat launch.

The bears are back.

Looking for a handy-man for work around the township.

ZBA alternates pay plan.

Zoning Administrator report: In the midst of investigating the 5 acre minimum in the RC district.

Keeping busy with zoning questions.

Next meeting we will need to cover the procedure regarding alternates.

Discussion regarding the 5 acre minimum.

Comment: Tim Shaffer: Supervisor made derogatory comments at the township board meeting about the ZBA not doing their job. If the Supervisor wants to make derogatory statements about this board he needs to come to the meeting or put it in writing to present to the Township Board.

Next regularly scheduled meeting will be May 23, 2019, if it is necessary.

Adjourned at 8:47 p.m.

Respectfully submitted by
Recording Secretary
Lois MacLean