

**WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS**

**Minutes for Regular Meeting on Thursday, May 25, 2023**

**7:00 p.m. at the Whitewater Township Hall**

**5777 Vinton Road, Williamsburg, MI 49690**

**Phone 231-267-5141/Fax 231-267-9020**

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

Roll Call: Bowen, Lake, Garza, Wroubel

No alternate to the ZBA, Board Representative-unassigned

Set/Adjust Agenda - Set

Declaration of Conflict of Interest - None

Public Comment - None

Approval of Minutes:

**MOTION** by Lake, second by Bowen, to approve minutes of January 26, 2023.

Roll call: Lake-yes; Garza-yes; Wroubel-yes; Bowen-yes.

Scheduled Public Hearings:

Appeal #ZBA-2023-02. Parcel id: 28-13-031-005-03, parcel address: 780 Starflower Lane, Traverse City, Michigan.

a. Open Public Hearing on Appeal #ZBA-2023-02 at 7:04 p.m.

Owner/Applicant, Steve Gwinn, is requesting a dimensional variance of 80' from the 150' setback requirement as stated in the Whitewater Township Zoning Ordinance, Article XII, Section 12.11.

Public hearing notice was posted in the Record Eagle on May 7, 2023, and notices were sent to property owners within 300' of the property subject to this public hearing at least 15 days prior to the public hearing.

b. Zoning Administrator Presentation: In addition to the report in packet Hall notes. There is nothing unusual about the lot that makes it exceptional. An environmental ordinance was removed but parts of it still have implications in other ordinances / sections, resulting in ancillary ramifications. The ZA investigation finds that apparently the 150' setback has more to do with an environmental aspect. The ZA recommends independent findings and conclusions that would support a decision to approve a minimum setback encroachment into the required 150' setback from Supply Road.

c. Petitioner Presentation: Steve Gwinn is currently residing in Kansas, retiring and moving to Michigan. Has been speaking with the ZA since he discovered the 150' setback from Supply Road. The variance is for the accessory structure 42'x40' (barn), not the dwelling. He would like the barn close to the road as part of the noise barrier and for ease in use of the structure and minimal tree removal.

Wroubel notes that he does not see a practical difficulty, it can be put somewhere else.

Gwinn notes that there would be a lot of trees that would have to come down.

d. Report on Site Visits: Bowen checked it out. It is close to Supply Road. Lake notes that he can see why he would want to keep the garage close to the entry.

Hall notes that there are no notes or any verbiage in the ordinance that explains the support of the 150' setback. Front road setbacks everywhere else in the township are all the same at 40'.

Garza notes that the property was purchased with this setback.

Gwinn notes that he would not want to clear as many trees as would be required to put in the structure 150' from the road. Gwinn notes that he could change the location, clear more trees, and look into doing a drive through drive with another drive on Supply Road. Gwinn notes that he would like to keep it as wooded as possible as the township has indicated they prefer.

Gwinn purchased the property over a year ago, found out about the setback just a couple months ago.

The developer indicates that he did not know about the 150' setback along Supply Road. The structure

would make for a nice divider in a nice wooded area. Trying to leave as many trees as possible. Will put trees on the berm and have already been planting / transplanting as many trees as possible. There is some flexibility to move it some south but not the whole 150'. Have looked at many options. This is the best option to keep as many trees as possible.

e. Correspondence: None.

f. Public Speaking in Favor of Appeal: None.

g. Public Speaking in Opposition to Appeal: None.

h. Anyone Wishing to Speak on the Appeal Who Has Not Already Commented: None.

i. Close Public Hearing on Appeal #ZBA-2023-02 at 7:32 p.m.

j. Discussion: Lake can understand why he wants it there. In a different area he would have to take out a lot more trees, creating a berm and transplanting trees.

Bowen questions why do we have a 150' setback? Can he use the property? Is it in the township's best interest to hold firm to it? Is the request the minimum to make it usable?

Garza says it is a shame he bought the property with the ordinance the way it is. It is a very large setback. It seems there is enough room to make adjustments.

Gwinn notes that he would have to clear so much that it would not be a nice wooded lot. It would not benefit the township to add another drive or to clear so much of the land. Gwinn questions the verbiage of the ordinance. Guideline vs ordinance – what is the difference?

Wroubel notes that this is a situation where the ordinance is what it is. Gwinn can build on the property just not where he wants it.

Lake, it is a considerable chunk of the land, when the rest of the township has 40' setbacks.

k. Findings of Fact:

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.

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. This is not a Use Variance as dwellings and accessory structures are permitted by right. Discussion indicates - Yes

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

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 is not resulting from any act of the applicant. Discussion indicates - 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 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 and welfare.

6. The requested variance is the minimum necessary to permit reasonable use of the land. No

7. The practical difficulty is not self-created. No

The Zoning Administrator notes that the difficulty was created by Whitewater Township when establishing an excessive setback determined to be associated with a previously deleted article in the zoning ordinance related to environmentally sensitive areas.

Bowen recommends to not approve the request.

Gwinn notes that the excavation alone will be \$30,000 and seems extraordinary. The developer did not

know or share.

Wroubel notes that cost is not something the ZBA can take into consideration. The building can be built on another section of the property and meet regulation.

Gwinn, can I ask for something less than the 80' variance? Gwinn then asked for a 50' variance to work with a 100' setback, which is still a significant setback.

Bowen notes that the Planning Commission needs to look at, possibly address the why it is set the way it is currently. This is what we have to go by to make our judgement.

Need to find out why the 150' is established.

Wroubel is not willing to let it go at a 50' variance to a 100' setback.

l. Conclusion: Deny the request

m. Reasons for Conclusion: Based on the findings of facts as presented.

n. Decision: Deny the request.

o. MOTION by Bowen, second by Wroubel to deny Appeal #ZBA-2023-02, by not granting the request for a dimensional variance of 80' from the 150' setback requirement as stated in the Whitewater Township Zoning Ordinance, Article XII, Section 12.11., based on the issues with the stated findings of fact, noting #7, 6 and 1.

Roll call vote: Garza-yes; Wroubel-yes; Lake-yes; Bowen-yes; Motion carried to deny the variance.

Appeal #ZBA-2023-03. Parcel id: 28-13-127-001-02, part of The Pines Cottages, LTD, parcel address: 7882 Cook Road, Williamsburg, Michigan.

a. Open Public Hearing on Appeal #ZBA-2023-03 at 7:59 p.m.

Owners/Applicants, Don and Winnie Warner dimensional variance is requesting an extension of nonconforming use/structure to restore the existing structure within the same footprint by reinforcing the roofline, add a roof between the dwelling and existing accessory structure and by constructing a roof over the existing/remaining deck area. This request is applicable to the Whitewater Township Zoning Ordinance, Article IV, Section 4.12 and 4.15.

Public hearing notice was posted in the Record Eagle on May 7, 2023, and notices were sent to property owners within 300' of the property subject to this public hearing, at least 15 days prior to the public hearing.

b. Zoning Administrator Presentation: Petitioner is requesting the ability to connect an existing accessory structure and the dwelling on the same footprint as is currently established. They are also requesting the ability to extend the nonconforming "use" of the structure through the rebuilding, replacement and continuation of the nonconforming structure.

To deny a non-conforming use you have to practically find a malicious intent.

c. Petitioner Presentation: Don Warner, we have looked at a lot of different options. Have had the cottage for over 20 years. The roof is sagging, creating a problem with wetness, aesthetics and safety. Removing the chimney will help to make the roof stronger. We are just trying to address the issues that have been getting worse and worse over the years. Working with the DEQ to address the drainage around the cabin because it is low lying. Even something simple to redirect drainage. Being the first cabin on the road it will help with the look of the whole block.

The footprint will remain the same even though some of the foundations will have to be removed and recreated. There is rot in various areas on the house. The deck will become more like a breezeway. Lake asked about the roof. All the roof sections will tie in to each other. All of the deck will be covered. It will be a covered porch over the current deck only.

d. Report on Site Visit: Wroubel notes that it is not increasing the footprint, not increasing the non-conformity. Fixing the walls and the roof. We have approved the other cabin updates in the area.

Bowen notes that there is some rot. There are a lot of problems with the cabin. Chimney is not safe. Lake notes that the corners will be held up by poles, the front is 20' and the width is 27' including the decks / porches. It is a roof over the existing deck.

Discussion ensued regarding the drawn plans and the verbal descriptions.

Bowen notes that the roof on the back deck is new. The decks/porches will be open.

e. Correspondence: None.

f. Public Speaking in Opposition of Appeal: Wallace Weir, has been there longer than the Pines. Not in favor. A few years ago they did a less ambitious version of this but had to remove it because there was no land use permit. Do not believe it is a good plan.

The Warners use the cabin eight months of the year. Would like to put up the porch to enjoy the area.

g. Public Speaking in Favor to Appeal: Dustin Jones – new guy on the block. The most important aspect of living in a community like this is being neighborly. Here to support the neighbor in the ability to upgrade and maintain their present cabin making it livable and desirable.

h. Anyone Wishing to Speak on the Appeal Who Has Not Already Commented: None.

i. Close Public Hearing on Appeal #ZBA-2023-03 at 8:39 p.m.

j. Discussion: Bowen: Cabin is in disrepair. Work requesting is understandable. They are concerned with the safety and health.

Garza is in agreement with the requested improvements.

Lake indicates that they want to improve it – let them have it.

Wroubel notes that it is repairs, not making it any larger, adding eaves troughs is good. It is going over the existing foot print and it still all open.

Bowen doesn't want to see the back area be turned into an additional living space.

k. Findings of Fact:

1. Granting the extension of nonconformity will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance. Consensus - yes

2. Granting the extension of nonconformity shall not permit the establishment within a zoning district of any use, which is not permitted by right within the district. Consensus - yes

3. Granting the extension of nonconformity will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township. Consensus - yes

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 is not resulting from any act of the applicant. Consensus – yes

5. The extension of the nonconformity 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 and welfare. Consensus – yes because.

6. The extension request is required as the current structure is nonconforming and the Whitewater Township Ordinance requires the ZBA to approve any changes to nonconforming uses/structures. Consensus-yes

7. The practical difficulty is not self-created. Consensus – yes.

l. Conclusion: Approve the request.

m. Reasons for Conclusion: Based on the findings of facts as presented.

n. Decision: Approve as requested.

o. **MOTION** by Bowen, second by Lake, to approve Appeal #ZBA-2023-03, to restore the existing structure within the same footprint by reinforcing the roofline, add a roof between the dwelling and existing accessory structure and by constructing a roof over the existing/remaining deck area, removing the chimney and extending the roof across the front of the cabin. This request is applicable to the Whitewater Township Zoning Ordinance, Article IV, Section 4.12 and 4.15.

Roll call vote: Bowen-yes; Lake-yes; Garza-yes; Wroubel-yes. Motion carried to grant the variance.

Signing of the Variance Decision Certification Forms.

Other Matters to be reviewed by the Zoning Board of Appeals

- a. Correspondence Received - None
- b. Zoning Board of Appeals Members – Glad everyone is taking their job seriously.

Report of Planning Commission Representative, Wroubel: The PC is doing a lot of work. Had a joint meeting with the Board. It was an excellent meeting. Everyone is working together. Working on the community survey for the master plan. We have a planner, Randy Mielnik with North Place Planning, working with the PC on the master plan and the zoning ordinance. The survey will go out May 31.

Can take the question of the 150' setback on Supply Road to the Planning Commission.

All nonconformities have to come to the ZBA, the ZA cannot approve anything that is related to nonconformities. Wroubel does not think the ordinance regarding nonconformities needs to be addressed at this time.

Lake notes that this township survived for years with the taxes of the old people who have been here.

Lake would like to see the township do something to help the old people paying their taxes.

Report of Township Board Representative, Unassigned: Not available

Report of Zoning Administrator, Hall: Good things happening with the Planning Commission and working with the Board members.

There is an MSU Extension ZBA 6 module course available for \$75. The township will pay or reimburse.

There is nothing in the works for a June meeting.

Public Comment: None.

Adjournment: 9:10 p.m.

Respectfully submitted,  
Recording Secretary  
Lois MacLean