

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS

Minutes for Regular Meeting on Thursday, June 25, 2020

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: Benak, Bowen, Halstead, Hooper, Lake, Alternate Shaffer, Alternate Garza arrived at

Absent: Benak

Set/Adjust Agenda - Set

Declaration of Conflict of Interest – Halstead notes that his property touches the property in question.

Received one of the 300' letters. It makes no difference financially. Feels he can make an unbiased decision.

Public Comment - None

Approval of Minutes:

MOTION by Bowen, second by Lake, to approve minutes of January 23, 2020. On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

A. Appeal #ZBA-2020-01, Catherine Alfred, of 3765-2 Lander Rd., Chagrin Fall, OH 44022, is requesting a use variance for the purpose of erecting stand-alone structure. Parcel is zoned Residential in the A1-Ag District. Agents: Robert and Christine Jurs, 20816 Beaconsfield Blvd., Rocky River, OH 44116 Parcel 28-13-122-011-00, no assigned site address.

a. Open Public Hearing on Appeal #ZBA-2020-01 at 7:04 p.m.

Public hearing was posted in the Record Eagle on June 9 and notices were sent to property owners within 300' of property subject to this public hearing on June 9, 2020.

b. Zoning Administrator Pre sentation: Presented at the meeting, communications came in indicating support of the variance along with a feasibility study done on the possibility of a future sewer system. Staff report: Seeking a variance from zoning ordinance. A Use Variance requires a two thirds vote of the total ZBA, which means four out of five.

Try to keep a consistent Staff Report style. ZBA deserves more formality for the Zoning Administrator, the ZBA members and the Appellant deserves it.

Standard Findings of Facts for a Dimensional Variance not applicable in a Use Variance. Use Variance Findings of Facts in the Staff Report are taken directly from the Zoning Ordinance. The ZA included comments after each question. In a Dimensional Variance the ZBA must determine a practical difficulty. The Zoning Ordinance indicates that a Use Variance requires a determination that the property cannot reasonably be used for any purpose permitted in the zoning district. The reason the threshold is so high is because when you grant a Use Variance you have said yes, it is okay to do specifically what our ordinance says not to do. It has the effect of allowing the ZBA of amending the zoning ordinance and circumventing the natural legislative process.

Letter of correspondence by Haggard Plumbing and Heating, not opposed to the request.

I keep my presentation brief because I include as much detail as possible in the staff report. It is your job to breakdown the why's, if's and wherefore's of the standards of review.

Two questions: 1.) Did the Zoning Administrator in the first instance make the proper decision? If not, the ZBA will show facts to the contrary because that would become a permanent interpretation of the ordinance moving forward. 2.) Does the ZBA agree? If yes, identify the standards of review.

c. Petitioner Presentation: Robert Jurs: Shared a picture of the property when it was purchased, the old barn that was on Cram Road. In early 2000 they deemed the barn unsafe and had it removed in the hopes of building another one.

Last year they got a variance for the home update. Due to covid that project is not done yet.

All members of the Okaiyoka property owners have signed a letter are in favor.

The ordinance reads that adjacent property owners can build a pole barn. We had two things going for us:

1.) There was a barn there; 2.) We own the property to the south as one of the nine owners.

Shared a picture of the property. The private road is part of the ownership structure.

We don't want to store our boats, cars or tractor out in the meadow. The neighbors have said they are much happier with a pole barn.

Cottage was built in the 1930's, ownership has changed twice since then.

Referenced the Gerwin Agreement which is very similar to what we have here.

Trying to hide the barn in the woods.

We have no desire to rent. We would sign papers to that affect.

Takes umbrage with the zoning administrator's telling you what you have to do.

Discussion:

30'x50' pole barn on a separate property that does not touch the individual property that is owned. It does touch the road that meanders through all of the properties. They own 1/9th of the road and the property that runs next to it as part of the Okaiyoka Colony.

The lot is buildable and there is full intention of building a home on the approximate 10 acre lot in the future.

Cannot put the barn on the home property due to where the septic is located.

Barn property was purchased in the 1960's.

A lot of people want to build accessory structures without a primary residence.

Planning Commission wrote an ordinance regarding stand-alone/accessory structures that was rejected by the Township Board.

d. Report on Site Visit:

Lake: Where the old barn was I can see where you can build a nice home up there if they want to. Don't see a problem with it. It is dry up there.

Everyone went and looked at it.

e. Correspondence: Received as noted by the zoning administrator.

f. Public Speaking in Favor of Appeal: Rob Savage, 7920 Cram Road. Would like to see it. Would rather see a pole barn than all the junk. It will be a nice building. They are trying to keep it nice. The barn they tore down was separated from the home by the road.

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-2020-01 at 7:21.

j. Discussion of Appeal:

Lake: There used to be a driveway just south of the barn off Cram Road. No water lays in there. The ZA made the right decision.

Hooper: The ZA acted appropriately. Accessory structure without a primary home is not allowed. That is

the way the ordinance is written. It would open up a whole big can of worms. The board is absolutely opposed to this as per the ordinance that was presented to them via the Planning Commission and rejected.

Bowen: The ordinance is clear. We are bound by the rules. Environmentally it is better to have contiguous property. There are illegal accessory structures throughout the township. Hooper notes that that is why the PC was trying to address the issue. At this time we have to work with the ordinance the way it is.

Halstead: There is no leeway. We are not here to change the ordinance. That is for the PC.

Jurs indicates that they are requesting a variance, not asking to change the rules. It is the same thing as the Gerwin Agreement. We have extenuating circumstances – that is why it is a variance. The extenuating circumstance is the 1/9th ownership of the road.

Discussion of previous granted variance on the home in 2019.

Jurs indicates that he will build where the foundation was previously. There was only a barn there when the property was purchased.

ZA, Hall, indicates that would not be allowed either, the use was abandoned.

k. Findings of Fact:

1. Did the Zoning Administrator correctly read and administer the provisions of the Whitewater Township zoning ordinance and render an accurate decision?

If 'yes' then the decision of the zoning administrator shall stand.

If 'no', then the ZBA shall provide findings and conclusions to the contrary and render an official interpretation of the ordinance that permits an Accessory Building on otherwise vacant land that is not contiguous to land that has a primary or principal use established in common ownership.

If 'no', then the interpretation of the ZBA will become the final and official interpretation of the zoning ordinance to be administered.

Consensus: Yes, the ZA decision is accurate.

2. Use Variance: The ZBA may grant a use variance only upon finding that an unnecessary hardship exists. A Use Variance permits a use that is otherwise prohibited in a zoning district. A finding of unnecessary hardship shall require demonstration by the applicant of the following:

- a.) The property cannot be reasonably used for any purpose permitted in the district.

- b.) The need for the variance is due to unique circumstances particular to the property and not generally applicable in the area or other properties in the zoning district.

- c.) The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.

- d.) The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and the surrounding area will be considered.

l. Conclusion: The Zoning Administrator has correctly rendered an accurate decision.

m. Reasons for Conclusion: Based on the findings of fact.

n. Decision: Uphold the Zoning Administrator's denial.

o. MOTION by Hooper, second by Lake, to uphold the Zoning Administrator's denial and deny the use variance on appeal #ZBA-2020-01.

Upon roll call vote: Halstead-Yes; Lake-No; Hooper-Yes; Shaffer-No; Bowen-Yes; Benak-NA.

Motion carried.

Discussion: A simple majority is allowed if voting to uphold the ZA decision. The four out of five ruling is if the ZBA were to allow the variance request.

Signing of the Variance Decision Certification Form.

Discussion in / with the audience and members during Decision Form signing.

Upon further discussion Lake realizes that he thought the property was contiguous to the other property. The map and arrows were confusing to him. It doesn't change the outcome of the decision.

The Jurs' next option is to take it to court. It could be remanded back.

The Gerwin Agreement was a consent agreement set up with the township board not done through the ZBA.

Other Matters to be reviewed by the Zoning Board of Appeals

a. Correspondence Received - None

b. Zoning Board of Appeals Members - None

Report of Planning Commission Representative, Hooper: No meetings since March. This year we are working on the Master Plan review. The RC district and event barns have been requested to be reviewed by the Board. Event barn survey information has been compiled and notes that the survey was more in favor than was indicated by the people who came to the board and PC meetings.

Report of Township Board Representative, Benak: Not available.

Report of Zoning Administrator, Hall: You guys have a tough job. I understand the frustration. The township needs a more substantial Master Plan.

Public Comment: None

Next regularly scheduled meeting will be July 23, 2020, if it is necessary.

Adjournment: 8:20 p.m.

Respectfully submitted by Recording Secretary, Lois MacLean