

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
MEETING MINUTES OF AUGUST 22, 2013

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

Roll Call: Benak, Bowen, Halstead, Lake, Lyons

Absent: None

Also in attendance: Recording Secretary-MacLean, acting Zoning Administrator-Popp and 3 in audience.

Public Comment (For items not on the agenda) None

Approval of Minutes of 7/25/2013 Regular Meeting. Motion to approve by Benak, seconded by Halstead. All in favor. Motion carried.

Business Session:

Open Public Hearing at 7:03 on Appeal #A13-005, of applicant: Dennis & Helena Evans, of 176 Island View Drive, Traverse City, Michigan 49686, Parcel ID# 28-13-710-009-00. Variance from the 30' front yard setback requirements of Article 12.11, for an accessory structure.

Zoning Administrator Presentation: Popp: Notices were sent out and posted.

Applicants would like authorization to locate a new 24' x 24' accessory structure (garage) within the required front yard setback requirements of Article 12.11. Due to the layout of Island View Drive upon the road Right-of-Way and existing "Power Company" (Cherryland Electric) easements of the land in question the applicant requests a 29'.5" variance from Article 12.11 schedule of regulations of the Whitewater Township Zoning Ordinance and more specifically the 30' front yard setback requirement.

Discussion of background information and investigation into other Island Lake properties requesting similar variances. Parcel purchased in 2003. Permit to replace modular home with plans including a 24x26 garage approved in 2006. House was built but the garage was not built at that time. Original permit available for discussion of the original LUP with all questions answered with the original site-plan as submitted at that time. Lake: New structure to be 2' smaller than previously submitted.

Zoning Department Findings:

- On May 24, 2006, the applicant completed an application for and received a Whitewater Township Land Use Permit for a 24' x 26' similar structure.
- On June 18, 2013, the applicant completed an application for and received a Whitewater Township Land Use Permit #358 for a 24' x 24' accessory structure. Footings were set 30' from the edge of the road. Received a phone call asking for verification of setbacks. Used GIS to locate property points. GIS shows it as 30'+. Carefully looked through similar cases, included in the packet.
- The proposed construction will increase a desirable screening effect.
- Granting the variance will not be contrary to the public interest, provided Island View Drive remains where it is, and will not be contrary to the spirit in which the Ordinance has been enforced.
- Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township. Other parcels in the area have similar structures.
- The average number of feet in the investigated variances is 13.57' with a high 23' and a low of 7'.
- Granting the variance shall not permit the establishment within a zoning district of any use, which is not permitted by right within the district.
- 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.

ZA recommends granting a variance of 16' from Article 12.11, on appeal #A13-005, 6' off on the electric easement.

The original Island Lake development called the front of the properties the lake side with the backside being the side toward the road.

Visually the structure will be more than 30' off the road.

Petitioner Presentation: Dennis Evans: The appearance led us to pursue this and believed that it (the 2013) LUP was accurate.

Report on site visit:

Bowen: Visiting the site really helped put it in perspective of the questions being raised. The road was not put in exactly where it was proposed to be. Noticed that other houses and garages are in the set-back area.

Halstead: Initially confused, site visit helped to put it all together. I don't think they will ever move the road.

Lake: Visited the site and got a lot of questions answered. Can see where the problem is with the power lines and grades. Because the way the power line is it cannot really be placed anywhere else. Feel he should have it because it's no fault of his.

Benak: It is well marked. 10 structures that appear to be closer or real close to the road. This was approved in 2006 and if he had gotten the project done then we would not be here today. The road is not where it was set to be placed. This is not an unusual case for that area. This problem has been repeated time and time again on that road.

Lake: I am referenced repeatedly in the documents presented in the packet and I will stand by all of them.

Bowen: Hardship is a standard.

Correspondence : From Mr. and Mrs. Lutz, residing at 190 Island View Dr. indicates no objection to the variance.

Public Comment:

In favor: Tom Jenkins, 170 Island View Dr., the Evans' closest neighbor. It is very wooded in the area. It will be right close to my lot but I will not be able to see. The road is not in the center of the right of way. The property on the other side of the road is land locked. Structure will not be intrusive. Other properties close to the road: there is a common right of way. The Jenkins' are in favor of the variance.

John Mater, President of Island Lake Assoc. 302 Island View. The Havers, a near neighbor, are not in the area right now and he indicated that he is in favor. There are three sub divisions at the lake, two of them very old, before zoning came to be. The road is going to stay where it is; it dead-ends at both ends. It is very rural and we are happy with the situation and in favor of the variance.

Karen and Jim Marko, 193 Island View Dr., we are in favor of the variance. Give him the garage.

In opposition: None

Any Comment on this Appeal: None

Close Public Hearing on Appeal A-13-005: 7:39 p.m.

Discussion: Bowen: I looked at it and looked at what is proposed, the notes and the property. It looks like a good compromise with the 16' variance to stay off the road and stay away from the electric company set back.

Halstead: I believe it is the right thing to do.

Lake: In favor. See no reason to deny.

Lyons: Consistent with the area.

Bowen: It actually looks like it will be further from the road than some of the other residences and structures along the road. In favor of granting the appeal.

Benak: Excellent job putting information together by the Zoning Administrator. The 16' set back will be sufficient. It is a private road with slow speeds. To not grant it would be a disservice to the applicant. Health, safety and welfare are not in jeopardy.

Findings of Fact:

On May 24, 2006, the applicant completed an application for and received a Whitewater Township Land Use Permit for a 24' x 26' similar structure.

Not contrary to public interest and will not be contrary to the spirit in which the Ordinance has been enforced.

No adverse affect to the property or in the vicinity.

Proposed construction will increase a desirable screening effect.

Other parcels have similar setbacks and structures.

Will do substantial justice to the applicant but the decision shall not bestow 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.

Conclusion: Grant the request as put forth with a 16' front set back variance for 176 Island View Drive.

Reasons for Conclusion: Based on the findings of fact, customary use and health, safety and welfare are not in jeopardy. Best

Decision: Grant the request.

Motion by Lyons to grant a variance of 16' as proposed by ZA, Popp based on the findings of fact, seconded by Halstead.

**Roll call: Lake – yes; Lyons – yes; Halstead – yes, Benak – yes; Bowen - yes.
All in favor. Motion carried.**

Discussion: Popp: Need two other directions. Two lake front lots owned by the same person. Parcel A is the primary residence, parcel B wants to remove the primary residence and leave the pole barn that is already there. Continuing use, does not want to combine the two lots. Brings up the question of contiguous lots and accessory structures. He is willing to put in a deed restriction stating that if the property is sold it would have to have a residence or removes the accessory structure. Benak: Buildings were in place before zoning. Contiguous properties can be considered qualified for PRE. Lake: Common sense says it should work. Benak believes the rules are in place to make it possible without coming to the ZBA. Halstead: A decision needs to come through the Planning Commission regarding accessory buildings. Lake: As far as leaving the accessory and removing the old residence it seems to be in the standards already.

Media Center signs: Electronic billboards. Someone is trying to sign rights here in the township. What is an off premise sign? Benak: The Planning Commission is going to need to look at the electronic billboard. From an MTA meeting regarding light pollution it is said that there are traffic safety issues with the changing electronic signs. Must be set to a specific number of seconds.

Adjournment at 8:00 pm.

Respectfully Submitted by Recording Secretary MacLean