

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
Minutes for Regular Meeting on Thursday, September 26, 2019
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, Halstead, Hooper, Lake, Alternate Shaffer, Alternate Garza

Benak is one of the applicants of the appeal

Absent:

Set/Adjust Agenda – Add public comment

Declaration of Conflict of Interest – None

Public Comment - None

Approval of Minutes:

MOTION by Hooper, second by Shaffer, to approve minutes of August 15, 2019. On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

A. Appeal #A-19-06, Ardella and Donald Benak, 8190 Bunker Hill Road, Williamsburg, Michigan, are requesting a dimensional variance. Parcels are in the RC Zoning District.

Parcels 28-13-016-004-01, 28-13-016-004-03 and 28-13-016-004-10.

a. Open Public Hearing on Appeal #A-19-06 at 7:08 p.m. Ardella and Donald Benak are requesting a dimensional variance to reconfigure three vacant properties to make all three more conforming to current zoning standards, make more accessible and buildable. The plan is to build a home on newly created lot.

Public hearing was posted in the Record Eagle September 11, 2019, and notices were sent to property owners within 300' of property subject to this public hearing.

b. Zoning Administrator Presentation: Staff report: Seeking a variance from zoning ordinance and a variance of the land division ordinance. The land division ordinance references the zoning ordinance. The ZA notes in his report that the Whitewater Township Land Division Ordinance #26, Section VIII sets forth a variance procedure for land divisions as well as the standards to be reviewed. The review standards are substantially different from the traditional dimensional variance standards enumerated in Article XVIII, Section 18.70.B. There is a family history of land ownership. This is a unique circumstance. No parcels will be separated by the road. It is within the spirit and intent of the ordinance. The end result will add an additional parcel to the tax roll.

c. Petitioner Presentation: Ardella Benak, 8190 Bunker Hill Rd., Williamsburg, Michigan. The letter explains the history of the property. The five acre rule has stopped the family from being able to use the property as intended when purchased by ancestors. We could give an easement to access the land locked piece of property but it would not be good for emergency vehicles. By making these changes we are making it safer, stopping a split of property by the road, bringing three parcels more into compliance and will be able to carry on a family tradition of building family homes in the area that has been going on since the 1920's.

Linda Denham, Don's sister, is working with the bank to get the pie shaped piece returned back to Don and Della as indicate in the correspondence letter provided by Linda.

Noted by the ZBA: These lots were created before the 5 acre rule came into being. The act of the government created the non-conformity.

It looks confusing but it really is just down to having to be addressed because it is non-conforming and wants to make changes.

Benak is looking for the ZBA's blessing on this issue.

The Board is looking at the five acre rule.

d. Report on Site Visit: The hill is steep.

e. Correspondence: Two letters received in favor of the appeal.

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 #A-19-06 at 7:32.

j. Discussion of Appeal: Lake: I can understand what they want to do. The family was born, raised and grew up there. They want to make it right and fair and are putting out a lot of money for surveys to try to make it right. We had a similar circumstance with the family and the land.

Hooper: The non-conformity was created because of a ruling created in the township after the land was divided. It is a pretty easy, basic one to grant because the ruling made it a hardship for the property owner.

Halstead: Believes they are doing the best they can with the situation.

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.

The Master Plan and Zoning Ordinance encourage respect of property rights, promoting orderly development and promoting and protecting property values.

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.

The land use is currently residential and will continue to be used for residential purposes.

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.

Granting the variance will be in harmony with the appropriate and orderly development of the surrounding area and will allow all properties within the vicinity the opportunity to continue their use as historically has been enjoyed.

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 is not resulting from any act of the applicant.

The current parcel layout could be used for their intended purposes – residential. However, parcel 28-13-106-004-01 will require a variance to develop with no road frontage. The ability to reconfigure the lots to allow them to be more conforming seems to be the course of action.

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 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.

If granted, the variance will allow for continuance of the rights currently enjoyed – two non-conforming lots becoming less non-conforming. There will be no impacts that may endanger public health, safety and welfare.

YES NO

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

If granted the variance will allow the properties to be more conforming to current township standards. There are not many opportunities to be able to bring non-conformities more compliant.

YES NO

7. The practical difficulty is not self-created.

The actual right of way for Bunker Hill Road helped cause the unique layout and other factors that are not the fault of the applicants.

YES NO

Determining the answers to the seven 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 the property owner.

l. Conclusion: We agree with the petitioner

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

n. Decision: Grant the variance with a requirement of obtaining a survey clearly defining the newly created parcels with appropriate legal descriptions. Also, the ZBA deems these new parcels to be buildable under the Whitewater Township zoning ordinance regardless of minimum lot size in effect at the time an application is made for a land use permit.

o. MOTION by Shaffer, second by Garza, to grant the requested dimensional variance on appeal #A-19-06, with the stipulation to obtain and provide to the township a survey that clearly defines the newly created parcels with appropriate legal descriptions demonstrating any applicable zoning regulations, such as setbacks, are fully compliant. Also, the ZBA deems these new parcels to be buildable under the Whitewater Township zoning ordinance regardless of minimum lot size in effect at the time an application is made for a land use permit.

Upon roll call vote: Halstead-yes; Hooper-yes; Lake-yes; Garza-yes; Bowen-yes; Shaffer-yes; Benak-NA. Motion carried.

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: The PC is having a special meeting open house at 6 p.m. and Public Hearing on removing the ordinance regarding Environmentally Sensitive Areas because the county and state have people and entities that address those issues.

Report of Township Board Representative, Benak: N/A

Report of Zoning Administrator, Hall: None

Public Comment: None

Next regularly scheduled meeting will be October 24, 2019, if it is necessary.

Adjournment: 7:49 p.m.

Respectfully submitted by Recording Secretary, Lois MacLean