

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING OF September 27, 2018
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7:07 p.m.

Roll Call: Benak, Bowen, Hooper, Lake, Shaffer (Garza present but not needed)

Absent: Halstead

Also in attendance: Recording Secretary MacLean

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Approval of Minutes:

Motion to approve meeting minutes of January 25, 2018, by Benak, second by Lake. On voice vote, all in favor.

Motion carried.

Scheduled Public Hearing:

- A. Public Hearing on Appeal #18-001 Lynn Bartosik, 7645 Cram Road, Williamsburg, MI 49690, is requesting a dimensional variance. Parcel is in the A-1 (Agricultural) Zoning district.
 - a. Open Public Hearing on Appeal #18-001 at 7:09 p.m. Lynn Bartosik, parcel #28-13-127-023-80, 7645 Cram Road, Williamsburg, MI 49690, is requesting a dimensional variance of Article XII, Section 12.11-Schedule of Regulations-A-1, Minimum side-yard setback. Parcel is in the A-1 (Agricultural) Zoning district. Requesting a 10 foot variance from the required 15 foot side yard setback.
 - b. Zoning Administrator Presentation (From packet) The legal notice of public hearing was posted in the Record Eagle September 9, 2018. Notices were also sent out to property owners within 300 ft. of the property.
 - c. Petitioner Presentation: Lynn Bartosik, 7645 Cram Rd. Would like to build a wood shop / storage building. It is a nice stretch of land. Could back fill to bring it up to the land, flatten it out. Centered in the center of the valley. 200 feet away from the house, in the low area.
Benak: Drawings look like a two story. Wood shop storage would be on the second floor.
Hooper: Why can it not be moved 10 more feet? Aesthetics.
 - d. Report on Site visit:
Bowen there is obviously a large hill on one side and a small hill on the other. Can see him wanting to use his property.
Lake: Would need to raise the ground to move it.
Hooper: Can raise the elevation of the barn. Move toward the driveway. Dig, fill and/or retaining wall.
Bartosik would like to keep the trees that are there and not have the building in front of the house.
Benak: Letter in support (Haggerty Plumbing), is that the neighbor? Maybe. Coggeshall is a neighbor.
Bowen: The bump out and overhang will not be a problem.
Hooper: Obviously, that is where you want to put it. There is a lot of room you can place the building. Is there a hardship with the property? Are there other areas on the property that it could be built on?
Bartosik: When you start digging into the hill it can cause problems. The previous people pulled the top soil from the property. Concerned about structural integrity.
Lake: There is a hill.
Bowen: Is there another area you can build on? The practical difficulty is something that is very

unique. Can you move some dirt or take the bump-out out?

e. Correspondence:

Haggard's Plumbing & Heating letter of approval.

Email from Heidi Coggeshall, 7541 Cram Road in opposition.

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 #18-001 at 7:40 p.m.

j. Discussion of appeal: Where is the Coggeshall property? Appears it is an empty piece of property.
Bowen: I want to be sympathetic but I feel the difficulty as it is presented on this property does not warrant a variance.

Hooper: The terrain is not unbuildable. The property has a hill. We live in a very hilly area. Move the building over and be in compliance.

Lake: With some additional digging and retaining wall work he could build in compliance.

Benak: The six questions in regards to the findings of fact that need to answered.

k. Findings of Fact:

Standards for Nonuse or Dimensional Variance

Granting of a nonuse (dimensional) variance requires the existence of a *practical difficulty*, which is demonstrated by showing that:

1. **Special or unique conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same zoning district.**

Meeting this standard requires the requested variance to be related to the characteristics of the property and not to the personal situation of the applicant.

Special conditions or circumstances that are related to the property are generally physical characteristics that may normally include:

- Exceptional narrowness, shallowness or shape
- Exceptional topographic conditions or other extraordinary situations related to the property; or
- Use or development of the property immediately adjoining the property in question.

As with all variances, the principal is that the variance is needed to relieve a *practical difficulty* caused by unique conditions present on the land and in this case, the "*practical difficulty*" may be identified as the Steepness of the Slope.

Determined by the Zoning Board of Appeals. Consensus: YES NO

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2. **A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.**

Property owners are given certain rights to use their property within the limits allowed by the zoning ordinance.

This standard permits the Zoning Board of Appeals to modify the request of the applicant to accommodate the special condition or circumstance but only approve the amount of variance is necessary to do so.

Determined by the Zoning Board of Appeals. Consensus: YES NO

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3. **The special conditions and circumstances do not result from the actions of the applicant.**

A buyer of a lot that cannot be developed without a variance may ask that the Zoning Board of Appeals grant a variance to allow use of the lot. In this case, the applicant did not take an affirmative action by creating the lot. Accordingly, this standard should not be used as a reason for denial (although the variance still must meet the other standards of the ordinance).

Determined by the Zoning Board of Appeals. Consensus: YES xxxxx NO

4. **The granting of the variance will be in harmony with the general purpose and intent of this ordinance.**

Whether the Zoning Board of Appeals agrees or disagrees with any provision in the ordinance is irrelevant. The Zoning Board of Appeals function is to enforce the provisions of the ordinance, except in very specific instances where conditions exist that would make compliance with the requirements impractical. Those conditions are defined by the review standards of the ordinance.

Determined by the Zoning Board of Appeals. Consensus: YES x NO xxxx

5. **The granting of the variance will not be injurious the neighborhood or otherwise detrimental to the general welfare.**

As with any zoning action, the result of the proposed variance should not be harmful to adjacent properties. While the opinions of surrounding property owners are useful, they should not be given absolute weight. The role of the public is not to give their blessing or veto, but to provide the Zoning Board of Appeals with information useful to its decision making process.

On the other hand, it's appropriate for the Zoning Board of Appeals to take the comments of the public into consideration to determine whether or not the variance may adversely affect nearby property or the neighborhood.

Determined by the Zoning Board of Appeals. Consensus: YES NO xxxxx

6. **The spirit of the ordinance shall be observed, public safety secured and substantial justice done.**

Observing the spirit of the ordinance will mean that the Zoning Board of Appeals understands the potential effects one or several variances could have on the effectiveness of the zoning ordinance. "Public safety secured" indicates that the variance, if approved, will not create an unsafe condition. While "substantial justice" directly addresses fairness to the applicant, it also applies to others who might be affected by the variance, such as neighboring property owners.

Determined by the Zoning Board of Appeals. Consensus: YES NO xxxxx

Based on the six questions. The property is still useable without granting the request. There are other options, possibly it is a matter of moving additional dirt or adding more retaining wall.

l. Conclusion: Deny the request.

m. Reasons for Conclusion: The land can be used without granting the request.

n. Based on the findings of fact as presented.

o. Decision: Deny the request.

p. Motion by Bowen, second by Lake to deny the request on the ZBA Appeal 18-001. On voice vote, all those present voted in favor, none opposed. Motion carried.

Other Matters to be Reviewed by the Zoning Board of Appeals: None.

Planning Commission Representative report: Hooper: PC is working on the zoning ordinance to get it set up for recodification so the zoning ordinance is more accurate and more useable.

Township Board Representative report: Benak: Two meetings a month. Summer taxes are complete. Clerk is readying for the November vote. Looking for a new zoning administrator. Township audit complete with excellent remarks. Budget season starting soon. Parks and Rec has been doing a great job. Looking to hire a handyman for the township.

Zoning Administrator report: N/A.

Next regularly scheduled meeting will be October 25, 2018, if a request is presented.

Adjourned at 8:24 p.m.

Respectfully submitted by
Recording Secretary
Lois MacLean