

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS  
REGULAR MEETING OF November 29, 2018  
5777 Vinton Road, Williamsburg, Michigan

Call to order by Chair at 7:02 p.m.

Roll Call: Bowen, Garza, Halstead, Hooper, Lake, Shaffer

Absent: Benak,

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 September 27, 2018, by Hooper, second by Bowen. On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

- A. Public Hearing on Appeal #18-002 Kirk & Joy Morris, 10125 Miami Beach Rd., Williamsburg, MI 49690, is requesting dimensional variance. Parcel is in the R-1 (Residential) Zoning District.
  - a. Open Public Hearing on Appeal #18-002 at 7:05 p.m. For Kirk & Joy Morris, parcel #28-13-310-010-00, 10125 Miami Beach Rd., Williamsburg MI 49690. Requesting a dimensional variance of Article XII, Section 12.11 – Schedule of Regulations – R-1, Minimum Side-yard setback and minimum front-yard setback. Requesting a 2’7” side-yard setback variance on the east side and 5’4” front-yard (lake side) setback from the required 15’ side-yard setback and 50’ front-yard setback for construction of an addition of a second story on an existing home/garage.
  - b. Zoning Administrator Presentation The legal notice of public hearing was posted in the Record Eagle November 12, 2018. Notices were also sent out to property owners within 300 ft. of the property. Survey was completed on the property. Older, existing home, adding a second story, the existing home is already in the setback. Tom Kellogg, a neighbor contacted the ZA. He was concerned about the water run-off. ZA let him know there are no changes to the foundation, the roofline angle is going to be the same.
  - c. Petitioner Presentation: Kirk / Joy Morris, 7221 Davies Dr., NE, Rockford, MI 49341. Purchased the end of June. It is a 49 year old home. Morris’s are in the remodeling business. Have lot 13’ due to erosion on the lake side. Not changing the footprint, just going straight up and adding an 8x10 addition between the house and garage. Are the footings adequate? Yes – poured concrete walls.
  - d. Report on Site visit: Bowen: The lake is close. There is no place to go but up. Worried about the lake encroaching more? NO.  
Lake: You just got a new well. Joy: the house was gutted when we purchased it.
  - e. Correspondence: Kellogg indicates that his concerned has been addressed.
  - 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 7:20 p.m.
- j. Discussion of appeal: Lake: The only reason for the appeal is the going up. Because it was already non-conforming, that is why it has had to come to the ZBA. If it were a new build that would be a different story. This is more a formality. Morris indicates information has been submitted to GTC. GTC cannot approve with the variance.  
Bowen does not see any issues.  
Sewer system. Will be hooking up to the gas.
- k. Findings of Fact: Not changing the footprint.

**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 \_xxxxx\_ NO \_\_**

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 \_xxxxx\_ NO \_\_**

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 \_xxxxx\_ NO \_\_**

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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 \_xxxxx\_ NO \_\_**
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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 \_xxxxx\_ NO \_\_**

Based on the six questions.

- l. Conclusion: Approve the request. It is an existing encroachment to the setback. The home was grandfathered in when zoning was implemented
- m. Reasons for Conclusion: The current house / garage are already within the setback.
- n. Based on the findings of fact as presented.
- o. Decision: Approve the request.
- p. Motion by Bowen, second by Shaffer to approve the request on the ZBA Appeal 18-002, build the second story on the exiting house. 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 close to ready to get the zoning ordinance sent out for recodification.

Township Board Representative report: Benak: Interviews have been completed and job off presented for full time position.

Zoning Administrator report: There are a couple more ZBA cases that will be coming shortly. The ZBA appreciates Chris's work for the township – Thank you.

Next regularly scheduled meeting will be December 27, 2018, if it is necessary.  
January 24, 2019, is a mandatory meeting.

Adjourned at 7:51 p.m.

Respectfully submitted by  
Recording Secretary  
Lois MacLean

DRAFT