

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS
MEETING MINUTES OF SEPTEMBER 26, 2013

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

Roll Call: Benak, Halstead, Lake

Absent: Bowen, Lyons

Also in attendance: Recording Secretary-MacLean, acting Zoning Administrator-Popp, new Zoning Administrator-Dennis Hadedank and 2 in audience.

Public Comment (For items not on the agenda) None

Approval of Minutes of 8/22/2013 Regular Meeting. Motion to approve by Benak, seconded by Lake. All in favor. Motion carried.

Business Session:

Open Public Hearing at 7:03 on Appeal #A13-007, of applicant: Thomas Kellogg of 10139 Miami Beach, Williamsburg, MI. Parcel 28-13-310-011-01. Request of a Dimensional Variance of 27' from Article 12.11, specifically the Front yard setback requirement of 30'.

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

This request came to the ZBA earlier in 2013. The survey was done in 2012 and the stakes had been placed properly. At the time of the earlier 2013 case it was believed the stakes had been placed properly. Applicant requested authorization to construct a 36'x32'. Requesting a 29' variance of the 30' front yard setback. A variance request update was received on 9/20/2013 with a new design of a 38'x30' building. This slight modification creates a 27' variance request. Previously approved a 7' variance but the change in survey stakes makes that variance request obsolete. In the late 1990's the Township Board allowed for lot owners to "combine" small non-contiguous lots for the purpose of siting accessory structures. This was allowed with a recordable agreement that required the two parcels to be sold as a package only.

Similar variances described. Property corners are often not where people think they are.

Benak question: The application does not give a specific number of feet for the variance.

Popp: That is correct, referencing the Leatherby's as being a similar variance. A common mistake is that people think their property goes to the center of the road. This should proceed as a 29' variance. This building will be behind the other buildings along that same side of the road.

The updated proposed construction will provide 26 feet of space between the north building wall and the edge of Miami Beach Road. Bruski of the GT Soil Erosion & Sedimentation has approved.

Discussion of background information and investigation into other similar requests.

Zoning Department Findings:

- On September 6, 2013, the applicant completed an application requesting for Appeal A13-007
- Granting the variance will INCREASE the building setback compared to the listed samples provided and will not be contrary to the public interest or the spirit and intent of the ordinance.
- 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.
- 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.
- Soil erosion site review was conducted and permit #22331 issued.
- Additional requirements: (A) Final grade level of the lot is not to be higher than the level of Miami Beach Road. Any non-porous apron, approaches or driveways shall be graded as to return storm water run-off away from the structure and into the wetland area south. (B) A suitable eave trough system shall be required to return roof water run-off to the wetland area. (C) No part of the building, trim work, decoration or fixture shall extend closer than 36" to the North Property Line. (D) No parking or storage of any type can be allowed in the Miami Beach Road right-of-way.

This variance does not grant any personal use of the Miami Beach Road right-of-way not specifically granted by the recorded platted sub-division of Clearwater Beach. (E) The recorded agreement detailed in the background section of the document is executed and recorded with the Grand Traverse County Register of Deeds. (F) The Agreement combining the lots must be signed.

ZA recommends granting a variance of 29' from Article 12.11, on appeal #A13-007 with the additional requirements.

Bob Farrell, 10125 Miami Beach Rd. notes the letter says the building is 36'x32.

Updated request was made after the letters were sent to near neighbors. That is why the request is still at the 29'. The building will be 4' off the property line.

Petitioner Presentation: Thomas Kellogg being represented Ryan Williams, recognizes that the property goes to the center of the road.

Report on site visit:

Lake: Did not visit this one this time but had been to all the others referenced and had been there for the previous variance request. Do recognize the concern about the water run-off.

Williams says the water will be directed away from the road.

Halstead: It is behind all the other buildings along there and there is some room to move it even further back keeping it away from the wetland.

Benak: Did visit it during the last variance request. Recognizes the water run-off issue. It is pretty much the same as the rest of what is already down there.

Lake: There is a berm behind most of the garages that seems to be deteriorating and may need to be addressed in the future by property owners.

Correspondence :

E-mail from Pete Bruski of Soil Erosion & Sedimentation, 9/20/2013: Granted permit #22331. The builder wanted to keep further away from the wetland.

Letter from Bob Farrell of 10125 Miami Beach Rd., Lot 10, 12/14/2012. Mr. Farrell requested having this same letter included as an objection since it is basically the same request.

Public Comment in Favor of Appeal: None

Public Comment in Opposition of Appeal: Bob Farrell, 10125 Miami Beach Road, opposed. You don't build on the property line. Do not understand how you can build so close the property line. You say he is going to be 4' from the property line.

Mr. Williams explains that they are trying to keep further back from the road than the ones that are there.

Bob Farrell: Was told previously that there would be no building on the south side of the road.

Lake: Recalls that there would not be more residences.

Farrell: Recalls that the Livingston property right next to this parcel had been filled in after the subdivision was created.

Halstead: Moving sand from the lake to the other side of the road was stopped at one point.

Popp: Does not know of any original property owners owning property on the south side of the road. The Livingstons were likely the first people to build on the south side of the road. Likely before zoning came into the township.

Any Comment on this Appeal: None

Close Public Hearing on Appeal A-13-007: 8:10 p.m.

Discussion: To Mr. Farrell: Eaves troughs will direct the water. We have worked to allow people to use their property, just as we would work to grant you a request if it came up. Directing the water to the south keeps it away from the road.

Farrell: There is a drain at the Leatherbys that directs the water to the swamp.

Popp: Checked this right after the rain and the Leatherby's ditch was dry, it appeared to be doing what it was designed to do.

Benak: Will the requirement of having the final grade level be lower than the road address this run-off issue?

Popp: Addressing the elevation will help to address the issue.

Williams: Will be building to move the water.

Halstead: It looks to me like he wants to comply with all the rules and regulations. He really did not have to bring this back.

Lake: He is taking the neighbor's concern into account in construction.

Findings of Fact:

On September 6, 2013, filed for the variance.

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.

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.

Soil erosion site review was conducted and permit #22331 issued.

Conclusion: Deny as legally noticed of 29' variance. Approve 27' variance front yard set back for Appeal A13-007 with additional requirements and modifications.

Conclusion: Based on the findings of fact, including the variance request update building of 38'x30' and the 27' variance customary use and health, safety and welfare are not in jeopardy.
Best

Decision: Deny original request and grant as modified. .

Motion by Benak to deny the original variance request that was legally noticed, seconded by Lake. Benak – yes; Halstead – yes; Lake - yes. Motion carried.

Motion by Benak to Grant a modified variance of 27' to the front yard set back from Article 12.11, including a building design of 38'x30' with additional requirements as outlined in the ZA report: (A) Final grade level of the lot is not to be higher than the level of Miami Beach Road. Any non-porous apron, approaches or driveways shall be graded as to return storm water run-off away from the structure and to the wetland area south. (B) A suitable eave trough system shall be required to return roof water run-off to the wetland area. (C) No part of the building, trim work, decoration or fixture shall extend closer than 36" to the North Property Line. (D) No parking or storage of any type can be allowed in the Miami Beach Road right-of-way. This variance does not grant any personal use of the Miami Beach Road right-of-way not specifically granted by the recorded platted subdivision of Clearwater Beach. (E) The recorded agreement detailed in the background section of the document is executed and recorded with the Grand Traverse County Register of Deeds. (F) The Agreement combining the lots must be signed.

Based on the findings of fact: On September 6, 2013, filed for the variance.

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.

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.

Soil erosion site review was conducted and permit #22331 issued, seconded by Lake.

Roll call: Halstead – yes; Lakes – yes; Benak – yes. All in favor. Motion carried.

Discussion: Halstead: We need to have the PC address getting property line surveys done when people are coming to the township for any type of building.

Williams: If you can have the neighbor agree you may not need to have a survey but an agreement.

Popp: Need a consensus of this Board of what to take to the Planning Commission. I don't think you guys have seen this many issues because things were not be followed up and looked at properly. May need to change what the Zoning Administrator is supposed to do.

Halstead: Appreciate the honesty of their coming in to do the right thing for the people of the township, the neighbors and for his customer.

Popp: What do you want me to take to the Planning Commission, accessory buildings and property lines? Write up a short paragraph and make note of the cost to the property owner.

Halstead: Put the responsibility on the owner or the buyer. Need to have the property line via GIS, GPS

Popp: For any ZBA case that has to do with setbacks you have the right to have a survey, or the survey pins, pipe or monument. Possibly use a metal detector.

Benac: Have the home owner be responsible.

Adjournment at 9:00 pm.

Respectfully Submitted by Recording Secretary MacLean