

WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS

Agenda for Regular Meeting on Thursday, January 23, 2020

7:00 p.m. at the Whitewater Township Hall

5777 Vinton Road, Williamsburg, MI 49690

Phone 231-267-5141/Fax 231-267-9020

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Set/Adjust Agenda
5. Declaration of Conflict of Interest
6. Approval of Minutes of September 26, 2019
7. Scheduled Public Hearings: None
8. Other Matters to be Reviewed by the Zoning Board of Appeals
 - a. Correspondence Received
 - b. Resolution #ZBA20-01, 2020/2021 Regular Meeting Schedule
 - c. Review of Zoning Board of Appeals By-laws
 - d. Election of Officers, Chair, Vice Chair and Secretary
9. Report of Planning Commission Representative
10. Report of Township Board Representative
11. Report of Zoning Administrator
12. Public Comment
13. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141 or the TDD at 800-649-3777.

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

Resolution #ZBA20-01

Resolution for Whitewater Township Zoning Board of Appeals
Regular Meeting for 2020/2021
Whitewater Township
Grand Traverse County, Michigan

Be It Resolved that the Whitewater Township Zoning Board of Appeals will meet in regular sessions, as needed, for the 2020/20121 fiscal year on the following dates at 7 p.m. at the Whitewater Township Hall, 5777 Vinton Rd., Williamsburg, Michigan.

- Thursday, April 23, 2020
- Thursday, May 28, 2020
- Thursday, June 25, 2020
- Thursday, July 23, 2020
- Thursday, August 27, 2020
- Thursday, September 24, 2020
- Thursday, October 22, 2020
- Thursday, November 19, 2020*
- Thursday, December 17, 2020*
- Thursday, January 28, 2021
- Thursday, February 25, 2021
- Thursday, March 25, 2021

*November and December meetings are different than the normal fourth Thursday due to the holidays.

A motion to adopt the foregoing Resolution was made by _____ and seconded by _____.

Upon roll call vote, the following voted:

- Bowen -
- Benak -
- Hooper -
- Halstead
- Lake -
- Shaffer -
- Garza -

Resolution declared adopted.

I, _____, Secretary of the Whitewater Township Zoning Board of Appeals, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Whitewater Township Zoning Board of Appeals of said municipality at a regular meeting held on _____, relative to the adoption of Resolution #ZBA20-01.

Whitewater Township

Zoning Board of Appeals Bylaws

The following rules of procedure are hereby adopted by the Whitewater Township Zoning Board of Appeals to facilitate the performance of its duties as outlined in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, *et seq.*

SECTION 1: Officers

- A. Selection and Tenure**—At the first regular meeting in January of each year, the Zoning Board of Appeals shall select from its membership a Chairperson, Vice Chairperson and Secretary. An elected Township Official shall not serve as Chairperson. All officers shall serve a term of one year, or until their successors are selected and assume office, except as noted in C below. All officers shall be eligible for re-election for consecutive terms for the same office.
- B. Chairperson**—The Chairperson shall preside at all meetings, appoint committees and perform such other duties as ordered by the Zoning Board of Appeals or Township Board.
- C. Vice Chairperson**—The Vice Chairperson shall act in the capacity of the Chairperson in his/her absence. In the event the office of Chairperson becomes vacant, the Vice Chairperson shall succeed to this office for the unexpired term and the Zoning Board of Appeals shall select a successor to the office of Vice Chairperson for the unexpired term.
- D. Secretary** – The Secretary shall act in the capacity of the Chairperson in the event that both the Chairperson and Vice Chairperson are absent. The Secretary shall also sign all minutes of the Zoning board of Appeals upon approval.
- E. Planning Commission Representative**

The Planning Commission representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the Planning Commission and update the Zoning Board of Appeals on actions by the Planning Commission that relate to the functions and duties of the Zoning Board of Appeals.
- F. Township Board Representative**

The Township Board representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the Township Board and update the Zoning Board of Appeals on actions by the Township Board that relate to the functions and duties of the Zoning Board of Appeals.

SECTION 2: Meetings

- A. Meetings**—Meetings of the Zoning Board of Appeals shall be held on the Fourth Thursday of each month, or as noted below. All meetings shall take place at Whitewater Township Hall, 5777 Vinton Road, Williamsburg, MI 49690 at 7:00 P.M. The January meeting shall be mandatory in order to elect officers, review bylaws, and approve next fiscal year meeting dates.
- B. Notice**—Meetings shall be noticed in the Township's newspaper of record not less than 15 days prior to the hearing. Notices shall also be mailed to property owners within 300' of the subject property. Meeting notices shall state the purpose, time and location of meetings and shall be posted in accordance with the Open Meetings Act.

- C. **Public Records**—All meetings, minutes, records, documents, correspondence and other materials of the Zoning Board of Appeals shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.
- D. **Quorum**—A majority of the membership of the Zoning Board of Appeals shall constitute a quorum for transacting business and taking official action for all matters. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members are present.
- E. **Voting**—To pass or deny any variance, appeal or other official action required by the Zoning Ordinance, an affirmative vote of at least a majority of the total membership of the Zoning Board of Appeals is required. Voting shall be by voice vote; a roll call vote shall be required if requested by any Zoning Board of Appeals member or directed by the Chairperson. All Zoning Board of Appeals members, including the Chairperson, shall vote on all matters, but the Chairperson shall vote last.
- F. **Agenda**—The Chairperson and the Zoning Administrator shall be responsible for preparing an agenda for Zoning Board of Appeals meetings. The order of business for meetings shall be as follows:
 - 1. Call to Order
 - 2. Pledge of Allegiance
 - 3. Roll Call
 - 4. Set/Adjust Agenda
 - 5. Declaration of Conflict of Interest
 - 6. Public Comment (unrelated to Public Hearing(s))
 - 7. Approval of Minutes
 - 8. Scheduled Public Hearings
 - 9. Other Matters to be Reviewed by the Zoning Board of Appeals
 - a. Correspondence Received
 - b. Zoning Board of Appeals Members
 - 10. Report of Planning Commission Representative
 - 11. Report of Township Board Representative
 - 12. Report of Zoning Administrator
 - 13. Public Comment
 - 14. Adjournment
- G. **Public Hearings**—All public hearings held by the Zoning Board of Appeals must be held as part of a regular or special meeting of the Zoning Board of Appeals. The following rules of procedure shall apply to public hearings held by the Zoning Board of Appeals:
 - 1. Chairperson opens public hearing and announces the subject.
 - 2. Chairperson summarizes procedures/rules to be followed during the hearing.
 - 3. Applicant presents request.
 - 4. Township Zoning Administrator presents a summary or analysis of the request.
 - 5. Persons wishing to comment on the request are recognized.
 - 6. Chairperson closes public hearing and returns to the regular/special meeting.
 - 7. Zoning Board of Appeals deliberates and decides.

To ensure that everyone has the opportunity to speak, the Zoning Board of Appeals may elect to limit the time permitted for each person to speak, except that the applicant may be permitted additional time as the Chairperson allows. The Chairperson may also elect to allow persons to speak only once, until all persons have had the opportunity to speak, at which time the Chairperson, in his/her discretion, may permit additional comments.

All comments by the public and the Zoning Board of Appeals shall be directed to the chairperson.

- H. **Special Meetings**—Applicants to the Zoning Board of Appeals may request a special meeting, of which all costs shall be paid by the applicant; if there is more than one applicant, the costs shall be shared equally between all applicants. The business the Zoning Board of Appeals may

As Adopted by the Whitewater Township Board on 02/14/2017

perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. Special meetings shall also be noticed as required by the Michigan Zoning Enabling Act, as amended, the Open Meetings Act and these bylaws.

- I. **Recording Secretary**—A recording secretary shall be provided to the Zoning Board of Appeals. The recording secretary shall execute documents in the name of the Zoning Board of Appeals, perform the duties hereinafter listed below and shall perform such other duties as the Zoning Board of Appeals may determine.
 1. **Minutes**—The recording secretary shall be responsible for a permanent record of the minutes of each meeting and shall have them recorded in suitable permanent records retained by the Township Clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and record of votes, conditions or recommendations made on any action and record of attendance.
 2. **Correspondence**—The recording secretary shall be responsible for presenting all communications to the Zoning Board of Appeals.
 3. **Attendance**—The recording secretary shall be responsible for maintaining an attendance record for each Zoning Board of Appeals member and report those records annually to the Zoning Board of Appeals for inclusion in the annual report to the Township Board.

SECTION 3: Duties of the Zoning Board of Appeals

The Zoning Board of Appeals shall perform the following duties:

- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, *et seq.*
- B. Prepare an annual budget and annual report for the Zoning Board of Appeal's activities and submit to the Township Board.
- C. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Township Board, as needed.
- D. Perform other duties and responsibilities as requested by the Township Board or as may be specified in another Township Ordinance.
- E. Conduct site visits as deemed necessary to evaluate an application and supporting material. Site visits shall be conducted individually.

SECTION 4: Duties of the Zoning Administrator

- A. The Zoning Board of Appeals shall be assisted by the Zoning Administrator in performing the duties of the Zoning Board of Appeals, as noted in Section 3.
- B. The Zoning Administrator shall be responsible for the professional and administrative work in coordinating the functions of the Zoning Board of Appeals.
- C. The Zoning Administrator shall:
 1. Accept applications for matters to be reviewed by the Zoning Board of Appeals and ensure that such applications are complete.
 2. Forward application materials to the Zoning Board of Appeals at least one week prior to the meeting at which such matters will be considered.
 3. Inform the Zoning Board of Appeals of administrative and enforcement actions taken on behalf of the Township related to the Zoning Ordinance or other appropriate ordinance.
 4. Prepare written reviews and recommendations, if appropriate, for all requests and development proposals to be considered by the Zoning Board of Appeals.
 5. Perform other duties as may be directed by the Zoning Board of Appeals.

As Adopted by the Whitewater Township Board on 02/14/2017

- D. The Zoning Board of Appeals may be assisted by other professional or Township staff as needed, including the Township Attorney, Township Engineer or other person or agency.

SECTION 5: Absences, Removals, Resignations, Vacancies and Alternates

- A. To be excused, Zoning Board of Appeals members shall notify the Zoning Administrator, Zoning Board of Appeals Chairperson or other Zoning Board of Appeals member when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.
- B. Members of the Zoning Board of Appeals may be removed by the Township Board, after written charges have been prepared and a hearing conducted, for nonperformance of duty, misconduct in office or upon failure to declare a conflict of interest. For purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Alternates shall be notified to attend a meeting any time a regular member will be absent.
- C. A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Township Supervisor, Township Board or Zoning Board of Appeals Chairperson.
- D. Vacancies shall be filled by the Township Board within one month of resignation or removal of a member of the Zoning Board of Appeals. Successors shall serve out the unexpired term of the member being replaced, with the exception of the Planning Commission representative, whose term shall run consecutively with the term as Planning Commissioner.
- E. The Township Board may appoint not more than two alternates to the Zoning Board of Appeals. The alternate member may be called to sit as a regular member as provided in the Zoning Ordinance and the Michigan Zoning Enabling Act.

SECTION 6: Conflict of Interest

- A. Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in a hearing or deliberations on a request when:
 - 1. A relative or other family member is involved in any request for which the zoning board of appeals is asked to make a decision;
 - 2. The Zoning Board of Appeals member has a business or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency or association;
 - 3. The Zoning Board of Appeals member owns or has a financial interest in neighboring property. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance, or
 - 4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.
 - 5. The Zoning Board of Appeals member is also a member of the Planning Commission or the Township Board and voted on the same matter as a member of the Planning Commission or Township Board. However, the member may consider and vote on other unrelated matters involving the same property.
- B. The Zoning Board of Appeals member declaring a conflict of interest should state the nature of the conflict and whether he or she believes he or she could impartially consider the request before the zoning board of appeals. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of the conflict. The member declaring a conflict may absent him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate. He or she should not make any presentations to the Zoning Board of Appeals as a representative of the proposal.

SECTION 7: Amendments

These bylaws may be amended at any meeting by a vote of a majority of the membership of the zoning board of appeals.

Adopted by the Whitewater Township Board at their regular meeting on February 14, 2017.

As Adopted by the Whitewater Township Board on 02/14/2017