

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, MAY 22, 2019 AT 2:00PM
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

Members Present: Charles Freese, Ralph Hemmer, John Moore, John Thompson, Nini Sherwood

Members Absent: None

Others Present: Michael Turisk, Jen Merk, Trent Burrus, Sally Gathman, Carl Muscott, Cal Gouine, Russell Crawford, Cheryl Crawford, C. Maziasz, Roger Jacobs, Steve Warfield

The meeting was called to order by Chairperson Freese at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Freese led the Pledge of Allegiance.

APPROVAL OF AGENDA

The agenda was presented. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to accept the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

Minutes from the December 26, 2018 Zoning Board of Appeals meeting were presented. Ms. Sherwood referred sixth sentence under ZBA Comments on the second page and noted that the word “at” should be deleted. Mr. Moore referred to the sixth line under Public Comments on the second page and stated that the fourth word should be changed to “and”. **Motion** by Mr. Moore, seconded by Ms. Sherwood, to approve the minutes as amended. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Trent Burrus/David and Luanne Kaufman – The applicant requests approval of a 75-ft. front setback variance to construct a new deck and covered/screened porch on a waterfront property in a Natural Rivers (P-NR) zoning district. Per Section 17.1 of the Zoning Ordinance, a minimum of 150-ft. of front setback is required for waterfront lots on tributaries in the P-NR zoning districts. The subject property is located at 1612 Silery Road in Koehler Township, Parcel No. 171-009-400-016-00, Section 9.

Ms. Merk reviewed information included in the staff report. Discussion was held regarding canals being man made tributaries. Mr. Turisk stated that legal counsel has advised that canals are considered tributaries and a 150ft. front setback is required.

Mr. Freese asked for public comments. Mr. Jacobs stated he would like to see a definition for Natural Rivers as he believes the river is half mile away. Mr. Freese reviewed the definition. Discussion was held. Public comment closed.

Mr. Freese asked if the covered porch will be in the same area as the patio. Mr. Burrus stated yes. Mr. Freese asked if it will be any wider or longer than the existing patio. Mr. Burrus stated yes, it will be 2ft. wider. Mr. Freese reviewed section 10.4.8 from the Lake and Stream Protection Zoning District, “On property where existing structures on both sides are within two hundred (200) feet of a new building wall and said structures do not meet waterfront setback standards, the required setback need not be greater than the average setback on the adjoining developed lots.” Mr. Freese stated the structure on the parcel to the south is 45ft. 6in. from the water. Mr. Freese stated another structure is 28ft. 6in. from the water. Mr. Freese stated the average is 37ft. Mr. Freese stated that if this was in the Lake and Stream Protection Zoning District, it would be authorized under Section 10.4.8. Mr. Freese stated that in the past the Zoning Board of Appeals has gone by this provision in several cases located in the P-NR Zoning District in authorizing structures to be within the same average distance as the structure on either side. Mr. Freese read an email that was received from Patrick Ertel from the DNR. Mr. Freese stated that the DNR uses the same reasoning criteria in granting variances for setbacks in the P-NR Zoning District in which they have exclusive zoning jurisdiction.

Ms. Sherwood stated that a screened porch and deck are something that should be allowed so the property owner can enjoy it. Mr. Freese stated the question is not if a screened porch and deck can be allowed. Mr. Freese stated the question is where the screened porch and deck can be built based on setback requirements. Mr. Thompson stated that what has prevailed in the past is to take the average distance of the structures on either side of the subject parcel.

Mr. Freese added the following to the General Findings:

5. The structure on the parcel to the south is 45ft. 6in. from the ordinary high water mark. The structure on the parcel to the north is 28ft. 6in. from the ordinary high water mark. The average is 37ft.
6. The DNR email indicates that they are amenable to using an average distance for the parcels on either side as long as the encroachment on the setback is no greater than the average on the two on either side. The average is 37ft.

The Zoning Board of Appeals reviewed and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Ms. Sherwood, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

Trent Burrus/Larry and Sally Gathman – The applicant requests approval of a 1-ft. side setback variance to construct a covered porch on a waterfront property with 45-ft. width in a Lake and Stream Protection (P-LS) zoning district. Per section 17.1 of the Zoning Ordinance, a minimum of 8-ft. of side setback is required except in waterfront lots in the P-LS zoning district where a lot is less than 80 feet in width, then each side setback shall be 10% of the lot width, or 5-ft., whichever is greater. The subject property is located at 3171 Apple Blossom Street in Tuscarora Township, Parcel No. 162-019-100-028-00, Section 19.

Mr. Merk reviewed information included in the staff report. Mr. Burrus reviewed the site plan, provided pictures of houses in the area and explained that there isn't 5 feet between most of the houses in the area. Mr. Burrus stated that this request would not cause any more of a burden than the average home in the area.

Mr. Freese asked Mr. Burrus if they intended to remove the existing structure. Mr. Burrus stated yes. Mr. Freese asked if Mr. Burrus will rebuild the house on the existing foundation. Mr. Burrus stated yes. Discussion was held regarding moving the location of the house and foundation to meet the 5ft. side setback requirement. Ms. Gathman stated that there is nothing wrong with the foundation and she would like to rebuild on it. Mr. Freese stated that cost can't be considered. Ms. Gathman stated that the existing overhang is dangerous.

Mr. Freese asked for public comments. Mr. Jacobs asked if the house can be rebuilt without complying with zoning. Mr. Freese stated no. Public comment closed.

Mr. Moore stated that the main entrance should be on the back wall of the house and then there are no side setback issues. Mr. Freese stated that if the supports for the roof are at the 5ft. line, the roof can be extended 2ft. into the setback. Discussion was held.

The Zoning Board of Appeals added the following to the General Findings:

7. Existing structure is being removed.
8. Overhang over the existing walkway can extend 2ft. into the setback area, thus providing complete coverage for the existing walk.

The Zoning Board of Appeals reviewed and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Freese, to deny the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

Harold and Shayleen Polzin/Benjamin Mosley – The applicant requests approval of a 5-ft 2-in front setback variance to construct an addition onto an existing dwelling on a non-waterfront property in a Lake and Stream Protection (P-LS) and Agriculture and Forestry Management (M-AF) zoning district. The addition is to be constructed in the P-LS. Per section 17.1 of the Zoning Ordinance, a minimum of 30-ft. of front setback is required for non-waterfront lots in the P-LS zoning district. The subject property is located at 6125 Koral Bay in Benton Township, Parcel No. 104-035-400-011-00, Section 35.

Mr. Turisk stated that the applicant is proposing an addition to an existing single family dwelling. Mr. Turisk stated that there has been discussion regarding what is considered the front of the property and what is the side of the property. Mr. Turisk stated that it was agreed that the side setback is the side where the variance has been requested even though it faces the road. Mr. Turisk stated the applicant must adhere to a minimum side setback of 8ft. Therefore, no variance is needed. Mr. Freese stated that Koral Bay Road faces two sides of the dwelling in question and a portion of the third side. The main dwelling entrance, driveway and mailbox are all on one side of the dwelling. Section 2.3 states that the front setback is determined by the fronting road on which the dwelling is addressed. In this case, the same road name applies to the road on three sides of the dwelling even though the road makes a more than 90 degree turn at one corner of the structure. If the road had another name after the turn there would be no question that the parcel would be considered a

corner lot and the setback in question would be a side setback not requiring a variance. Using this reasoning, it is determined that no setback variance is required in this case.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Muscott referred to the Kaufman variance application and stated that Emmet County adopted an ordinance that would allow an average setback to be approved administratively rather than submitting an application to the Zoning Board of Appeals. Mr. Muscott questioned if this would be something worthwhile for Cheboygan County to consider. Mr. Freese stated that he can bring this up to the Planning Commission.

Mr. Turisk stated that the Planning Commission has identified home occupations in private storage buildings and tiny homes as a priority and will be discussing these topics in the next several months

Mr. Freese stated Election of Officers is to be included on the next Zoning Board of Appeals agenda.

ADJOURN

Motion by Hemmer to adjourn. Motion carried. Meeting adjourned at 7:50 pm.



John Thompson, Secretary