

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, APRIL 27, 2016 AT 7:00PM
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: Scott McNeil, Tony Matelski, Cal Gouine, Russell Crawford, Cheryl Crawford, Carl Muscott, Mary Smith, Charles Maziasz

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 March 23, 2016 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Hemmer, seconded by Mr. Thompson, to approve the minutes as presented. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Warren Alaperet – Requests a 40 foot front setback variance and 25 foot boat well setback variance to alter a non-conforming boat house structure by increasing the roof height in a Lake and Stream Protection (P-LS) zoning district. The property is located at 5836 Bellchase Dr., Tuscarora Township, Section 18, parcel #162-M47-000-011-00. Non-conforming structures in existence or under construction at the time of passage of the zoning ordinance may be continued but shall not be extended, added to or altered unless such extension, addition or alteration is in conformity with the provisions of the ordinance. A front setback of 40 feet and a setback of 25 feet from a boat well are required in this zoning district.

Mr. McNeil stated that this request is for a variance to increase the height of a non-conforming boathouse structure. Mr. McNeil stated that the structure is non-conforming due to two different setback regulations. Mr. McNeil stated that there is a 40ft. setback requirement from the canal and a 25ft. setback from a boat well. Mr. McNeil stated that the applicant would like to change the nature of the non-conforming structure and as a result would need a variance from each of the setback requirements.

Mr. Alaparent stated that he and his wife purchased this property in September of 2015 and are now full-time residents in Cheboygan County. Mr. Alaparent stated that when they purchased the property they were concerned about the sturdiness and safety of the structure. Mr. Alaparet stated the structure height is so low that he is concerned that someone may hit their head when entering or exiting the structure. Mr. Alaparent noted that Mr. Freese did bump his head when he was inspecting the site. Mr. Alaparet stated the existing structure is an eyesore as there is black, flat, tar paper roof. Mr. Alaparet stated he is asking for a variance to raise and upgrade the existing structure so he can be proud of his property and to make it safe. Mr. Alaparent presented pictures and blueprints for the board to review. Mr. Freese asked if there will be a peaked roof. Mr. Alaparet stated yes.

Mr. Freese asked for public comments. There were no public comments. Public comment closed.

The Zoning Board of Appeals added “There are numerous boathouses in the area.” to the General Findings. The Zoning Board of Appeals reviewed the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to deny the variance requests based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

John Dach - Requests a 19 ft. front setback variance to construct an enclosed porch (10ft. x 16ft.) in a Residential Development (D-RS) zoning district. The property is located at 6515 Mack Ave., Tuscarora Township, Section 24, parcel #161-M57-000-033-00. A 30 ft. front setback is required in this zoning district.

Mr. McNeil stated that Mr. Dach is requesting a front setback variance for a porch addition to a residence. Mr. McNeil stated that in the Residential Development Zoning District a 30ft front setback is required and Mr. Dach wishes to come within 11ft. of the front setback which requires a 19ft. front setback variance.

Mr. Dach stated that his parcel is on the corner of Witt Avenue and Mack Avenue. Mr. Dach explained that he needs more room as he has 5 grandchildren. Mr. Dach stated that he has two septic tanks on the property and it would be difficult to build anywhere other than the front. Mr. Dach stated that he is only asking to come out 2 ft. further than the existing porch.

Mr. Freese stated there are no homes on the same side of the street that extend as far out as Mr. Dach is intending for the proposed enclosed porch. Mr. Dach stated that the Zoning Board of Appeals members should look at the houses on the corner (yellow home and log sided home). Mr. Dach stated that he submitted a photograph that would show what the enclosed porch would look like. Mr. Dach noted that an addition was built three years ago on a home directly across from his home. Mr. Dach stated that he does not believe that it will meet the setback requirements. Mr. Freese stated that he did not see any structures that come as close as Mr. Dach is proposing to come. Mr. Dach stated that all 4 of the homes on the corner, with the exception of his home, have porches added on that would not comply with the setback requirements. Discussion was held regarding an aerial photo of the area. Mr. Freese explained that Mr. Dach's existing porch is 5ft. into the setback already. Mr. Freese stated that this is a legal non-complying structure and now Mr. Dach is proposing to enclose the existing 5ft. and add on another 5ft. Mr. Thompson stated the neighbor with the log sided home will lose his lake view if this enclosed porch is approved. Mr. Dach stated he has a letter from the neighbors stating that they have no objections to the proposed enclosed porch.

Mr. Moore asked what is the side setback requirement. Mr. McNeil stated that it is 8ft. Mr. Freese and Mr. Moore explained that a variance will not be necessary if the screen porch is built by the back door. Mr. Moore further explained that only an 8ft. side setback is required off of Witt Boulevard. Mr. Freese stated there are other options available for the location of the enclosed porch. Mr. Dach stated that he thought it would fit better if located off of the living room.

Mr. Freese asked for public comments. There were no public comments. Public comment closed.

The Zoning Board of Appeals held a discussion regarding additional options being available for the location of the enclosed porch.

The Zoning Board of Appeals added "No other structures on the same side of the street extend anywhere near as far into the setback as to what is proposed in the application." as General Finding 5. The Zoning Board of Appeals reviewed the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to deny the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

Request for interpretation - The Cheboygan County Zoning Administrator is requesting an interpretation from the Zoning Board of Appeals to clarify zoning district boundaries relative to lakes, watercourses and streams.

Relevant sections of Zoning Ordinance #200

3.9.2. Zoning district boundary lines are intended to follow property and lot lines, or be parallel or perpendicular thereto, or along the center lines of alleys, streets, rights-of-way or watercourses.

3.9.3. Boundaries indicated as following the shorelines of lakes shall be considered as following such shorelines. In the case of streams, such boundaries shall be considered to follow the center line of the streams. Where shorelines of lakes have changed, the boundary lines shall be construed as following the contour of the new shoreline and in the case of changes in the course of a stream, the boundary shall be considered as the center line of the new course.

SECTION 3.12. ZONING OF FILL AREAS

Whenever, after appropriate permits are obtained, any fill material is placed in any lake or stream so as to create a useable or buildable space, such fill area shall take on the zoning district and accompanying provisions of the land abutting said fill area. No use on any lake or stream shall be allowed which does not conform to the ordinance provisions on the property from which said use emanates. No fill material shall be placed in any lake or stream within the county unless appropriate permits are obtained.

Mr. McNeil stated it appears clear to the zoning administrators that the zoning district boundaries follow the shore of the lake. Mr. McNeil referred to section 3.12 and read "No use on any lake or stream shall be allowed which does not

conform to the ordinance provisions on the property from which said use emanates.” Mr. McNeil stated that he is asking for clarification from the board, with regards to lakes, that the zoning districts run out into the lake or that they run along the shore of the lake.

Ms. Sherwood asked for an example of where this would be an issue. Mr. McNeil stated that people have asked if zoning covers activities that take place on a dock or on a boat. Mr. McNeil stated that to this point they have said no that it is not zoning’s jurisdiction and that it is the ACOE and DEQ’s jurisdiction.

Mr. Freese stated that he does not see where there is a problem. Mr. Freese stated that we are looking at two sections of the ordinance; one section is regarding boundaries and the other is regarding fill. Mr. Freese stated that if you fill an area with the proper permits you are changing the land. Mr. Freese stated that if you dike an area and fill it, that is new land and the question is who own’s it. Mr. Freese explained that it is generally going to be owned by the property owner that is contiguous to that addition to the land. Mr. Freese stated that section 3.12 is talking about filled areas where permission has been granted by the DEQ and ACOE to fill an area. Mr. Freese stated he does not see where the problem lies as we are not talking about something on the end of a dock. Mr. Freese stated that we are talking about the land and the ownership of the land. Mr. Freese stated that one section is talking about the establishment of the boundary of the property which could be a surveyed line or a metes and bounds description. Mr. Freese stated if there is a surveyed set of points and the stream cuts through it doesn’t make any difference as the survey stakes govern. Mr. Freese stated the use of the land is governed by section 3.12.

Mr. Moore stated he agrees with Mr. Freese, but asked if Mr. McNeil can be more specific on the question. Mr. McNeil stated that this was a question from Mr. Schnell regarding discussions he has had concerning lakefront development in areas that had been filled. Mr. McNeil stated he is asking for clarification with regards to zoning on lakes.

Mr. Freese stated the zoning of the parcel that the fill extends in front of governs the use of the land. Mr. Moore stated that theoretically the sentence is not needed. Mr. Moore stated if he puts 10 yards of fill in front of his property he has altered the shoreline and it is covered under a different section saying the boundary is the shoreline. Discussion was held. Mr. Freese stated there must be a problem that we are not looking at that caused this to be included in the ordinance. Mr. Freese stated there is no problem with the interpretation the way it stands. Mr. Freese stated that section 3.12 says that if you add in front of the property by fill that zoning of the property stays with the fill. Mr. Freese stated that putting a dock out does not give someone extra rights out on the water. Mr. McNeil asked if the sentence causing the concern carries no weight. Mr. Thompson noted that sections 3.9.2 and 3.9.3 cover everything.

Mr. Freese stated if someone wants to build a jetty in front of their property, the mere construction of the structure will change the littoral drift in front of the property and there will be an accretion and scouring action because of the jetty. Mr. Freese stated it can build up a beach for a property owner.

Mr. McNeil asked Mr. Freese if he is saying that zoning follows the shoreline and does not extend into the lake. Mr. Freese stated that is correct. Mr. Freese stated if a fill situation is created that is above the high water mark on a big lake or on an inland lake and it is dry, it is zoned.

Motion by Mr. Moore, seconded by Mr. Thompson, that zoning follows the shoreline and does not extend into a lake and if a fill situation is created that is above the high water mark on a big lake or on an inland lake and it is dry, it is zoned. Motion carried unanimously.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

Mr. Moore stated that he would like for the Planning Commission to look at corner lots. Mr. Freese stated he will discuss corner lots with the Planning Commission. Discussion was held.

PUBLIC COMMENTS

Mr. Muscott referred to the sentence in section 3.12 and asked why the sentence is in this section. Mr. Muscott stated it

doesn't refer to anything that is filled. Mr. Muscott stated this section addresses something like a dock extending from a property or a pontoon boat floating at a dock. Mr. Freese stated he does not see that it really causes a problem.

Mr. Muscott stated the Planning Commission clarified at the last meeting where the pontoon boat would be located. Mr. Muscott stated it would not be in the river. Discussion was held.

ADJOURN

Motion by Mr. Moore to adjourn. Motion carried. Meeting adjourned at 7:44pm.



John Thompson, Secretary