

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS SPECIAL MEETING & PUBLIC HEARING
WEDNESDAY, SEPTEMBER 3, 2014
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

Members Present: Charles Freese, Ralph Hemmer, John Moore, Chris Brown, Mary Street

Members Absent: None

Others Present: Scott McNeil, Tony Matelski, Pete Thomas, Suzanne Thomson, Del Porter, Doug Domke, Clifton Peterman

The meeting was called to order by Chairperson Freese at 9:00am.

PLEDGE OF ALLEGIANCE

Chairperson Freese led the Pledge of Allegiance.

APPROVAL OF AGENDA

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

PUBLIC HEARING & ACTION ON REQUESTS

Douglas Domke – Requests a 100ft. front setback variance for a dwelling in a Natural Rivers Protection (P-NR) zoning district. The property is located at 11304 W. 638 Hwy. and 11568 W. 638 Hwy., Forest Township, Section 24, parcel #231-024-209-081-00, #231-024-100-007-00, #231-024-311-101-00, #231-024-305-041-00 & #231-024-200-001-00. A 200ft. front setback is required in this zoning district. The applicant is requesting a second appeal for the same parcel within twelve months under Section 23.3.3. of the Cheboygan County Zoning Ordinance No. 200.

Mr. McNeil stated the applicant is requesting a rehearing under section 23.3 of the Zoning Ordinance. Mr. McNeil stated the board first heard an appeal for a 100ft. variance request on 07/23/14 which was denied. Mr. McNeil stated this request can be reheard if the Zoning Board of Appeals determines that conditions affecting the property have changed substantially or that the nature of the request has change substantially from the date of the previous petition.

Mr. Freese asked how this request varies from the last request. Mr. Porter stated that one of the changes is that all of Mr. Domke’s property was included on the application. Mr. Porter stated that the last request included 160 acres and this request includes 362 acres. Mr. Porter stated this gives justification to the comment that Mr. Domke has a mile of river on his parcels. Mr. Porter stated that under the second section of the Act the information that the board used to adjudicate this matter has changed substantially. Mr. Porter stated a letter has been provided to the board that the DNR had no jurisdiction over the setbacks. Mr. Porter stated that he believes that these changes are substantial enough to allow this request to be reheard.

Mr. Brown stated the DNR does not have any jurisdiction over the Upper Black River but Cheboygan County does follow the DNR guidelines. Mr. Brown stated the DNR has alternative plans as they allow construction and filling of wetlands if you provide an equal or more suitable space. Mr. Brown stated this is a unique parcel within the Natural Rivers District. Mr. Brown stated the spirit of the ordinance is to protect the river and this is an opportunity to protect a mile of the river by allowing this applicant to use a small section of his property rather than split the property up and sell the individual parcels where there will be 30-40 houses built eventually which would create a larger impact. Mr. Brown stated the spirit of the ordinance will be well protected. Mr. Brown stated that we discriminate against someone who owns a larger parcel as we allow someone to build on a smaller parcel because it is considered a hardship. Mr. Brown stated someone with a large parcel is penalized which is not right.

Mr. Freese stated the change to include the additional parcels is a material change and the amount of river frontage has changed considerably. Mr. Moore agreed with Mr. Freese. **Motion** by Mr. Freese, seconded by Mr. Brown, that the Zoning Board of Appeals finds that the nature of the request has changed substantially from the date of the previous petition due to receipt of a variance application dated August 7, 2014 which includes a letter from the applicant dated August 7, 2014 and maps indicating several contiguous parcels of property under his ownership. Motion carried unanimously.

Mr. McNeil stated under section 23.3 the applicant is requesting a variance to place a home 100ft. from the river where 200ft. is required in the Natural Rivers Protection zoning district.

Ms. Street stated there is another location on this parcel approximately ¼ mile away that was not considered. Ms. Street stated this site was cleared and is adequately spaced back from the river. Ms. Street referred to the letter from the DNR and stated there is nothing in the letter that suggests that a variance should be granted.

Mr. Porter stated the applicant has a large amount of river front and is asking to use a small portion of the river front. Mr. Porter believes it is unreasonable to ask the applicant to take a position for a home site determined by a board when he has a large amount of property. Mr. Porter stated the applicant will have an additional expense to move the electric 300ft. - 400ft. and will put him further away from the existing buildings. Mr. Porter stated protecting the river is the issue and he does not believe that moving the residence 300ft. - 400ft. will make a lot of difference. Mr. Porter stated the applicant has picked a decent location that is not environmentally damaging. Mr. Porter stated that from the river you will barely be able to see the home. Mr. Porter noted that the applicant is in the farming business and this home is where he will live. Mr. Porter stated that putting this river frontage together is an attractive thing for conservation.

Mr. Freese asked if there is an additional correspondence. Mr. McNeil stated no. Mr. Freese asked for public comments. Mr. Peterman stated he owns the property to the south and the east of Mr. Domke's property. Mr. Peterman stated his river front property is low land and he understands why it would be foolish to request a variance. Mr. Peterman stated that Mr. Domke's property is high enough and there should not be any problems. Mr. Peterman stated if a variance is granted to Mr. Domke it shouldn't be detrimental to the river. Public comment closed.

Mr. Freese stated he talked with Mr. Ertel from the DNR. Mr. Freese stated that the DNR has provisions for granting variances. Mr. Freese stated one provision is that for every foot of elevation difference the DNR is able to grant a horizontal variance up to 50ft. Mr. Freese stated they also are able to grant a variance of up to 25% of the setback, not to exceed 50ft. Mr. Freese stated these two variances are not to be added together. Mr. Freese stated the areas where the DNR controls the zoning they have a panel which is appointed. Mr. Freese explained that it appears the chances of getting a variance from the DNR are very unlikely. Mr. Freese stated there is also a provision for a 150ft. setback for a septic field and a provision requiring a 50ft. setback from the edge of the bluff/drop off to the river. Mr. Freese stated the Cheboygan County regulation was adopted in accordance with the DNR's regulation regarding the protected rivers. Mr. Freese stated that Mr. Ertel has used Cheboygan County as an example for other zoning jurisdictions to follow.

Mr. Brown stated the DNR does a great job at protecting the resources in Michigan. Mr. Brown stated the board is made up of a composite of what they want it to be and he believes it is unfair. Mr. Brown stated Mr. Domke could have subdivided this parcel into one acre lots with 150ft. of frontage which would have created 50 - 60 lots. Mr. Brown stated in the future there would have been applicants applying for variances. Mr. Brown stated the Zoning Board of Appeals has granted 100ft. variances in the past based on shape, topography, size, depth, etc. Mr. Brown stated this is encouraging property owners to create postage stamp size lots on the river. Mr. Brown stated he understands the ordinance and why it was created but the whole fact of why it was created was to protect the pristine value of the river. Mr. Brown stated we are penalizing someone who has gone far above and beyond to protect the river. Mr. Brown stated we are not taking into consideration the magnitude of something but we glorify something that is miniscule and that is not fair.

Ms. Street believed there was to be a ruling on the Upper Black River versus the Pigeon River regarding setbacks. Ms. Street stated she does not see any difference in the ruling with the possible exception of the 25% or 50ft. adjustment. Mr. Porter stated the letter he provided to the Zoning Board of Appeals was specific and the DNR has no jurisdiction regarding setbacks on the Upper Black River. Mr. Porter stated the request is for a waiver from Cheboygan County, not the DNR, and he should not be tried under the DNR rules. Mr. Porter stated the direction to lean toward the DNR's rules is unfair. Mr. Porter stated the DNR is allowed to make comments but they are not elected. Mr. Porter stated that he does not have a problem with Mr. Ertel's comments but he is concerned that the Zoning Board of Appeals is going back to adjudicate this system after he was told to produce a letter from the DNR stating that they do not have jurisdiction. Mr. Porter stated he has produced the letter that was requested. Mr. Porter stated that it is now being stated that the DNR does have jurisdiction. Mr. Freese stated the DNR does not have jurisdiction over the Upper Black River. Mr. Porter asked how the DNR's rules apply since they do not have jurisdiction. Mr. Freese stated the only reason he is bringing their rules into this is the fact that our regulation does specifically call out their requirements. Mr. Freese stated this ordinance was passed by the Cheboygan County Board of Commissioners who are elected officials. Mr. Porter stated that he appreciates the Natural Rivers district being under the jurisdiction of Cheboygan County Zoning. Mr. Porter stated he has proven that the DNR does not have jurisdiction and stated the question before the Zoning Board of Appeals is what damage will this do to the conservation of the river. Discussion was held.

Mr. Freese stated the Zoning Board of Appeals is faced with a set of requirements that must be met in order to grant a variance from a Cheboygan County law. Mr. Freese stated he suggested reducing the 200ft. setback requirement to 100ft. for the Upper Black River to the Planning Commission. Mr. Freese stated he does not know what will happen with this suggestion as there were some Planning Commission members opposed and some that were receptive to the suggestion.

Discussion was held. Mr. Freese stated he would consider something less than 100ft. for a variance. Mr. Freese stated the DNR's guideline of remaining further back from the crest of the drop off to the river has merit. Mr. Freese stated according to the survey the crest of the drop off is 15ft. above the river and the existing fill is approximately 90ft. from the river. Discussion was held.

Mr. Freese asked Mr. Domke if a 150ft. setback would be acceptable. Mr. Domke stated he would prefer a 100ft. setback as it will make more work for him to have a 150ft. setback. Mr. Porter stated a 150ft. setback will set the house up 4ft. Mr. Freese stated the same thing will be done at 150ft. Mr. Porter stated that he can't get back far enough where the back of the fill will blend into the back. Mr. Porter stated they are currently trying to blend the fill into the existing slope and if you go up another 4ft. you will have to go a long ways back to blend in. Mr. Moore stated 100ft. from the front of the house to the taper to natural ground is shown on the site plan. Mr. Domke stated the house will be 28ft. x 36ft. and the 36ft. will run east and west. Mr. Moore stated if the house is pulled back to the 25ft. depth marking, the crest of fill can be trimmed and this would not be a site line issue. Mr. Moore noted this would be a 75ft. variance. Mr. Porter stated this is feasible. Mr. Moore stated this option would not require any additional fill. Discussion was held. Mr. Moore asked if the applicant is willing to change the request to a 75ft. setback variance. Mr. Porter stated yes.

The Zoning Board of Appeals added "The applicant has created a nature and river protection preserve for over two miles of frontage and this particular site is the least impactable site on the river and there is an elevation issue." as #6 to the General Findings. The Zoning Board of Appeals revised #4 to "The applicant is seeking a 75ft. setback variance from the water's edge of the Upper Black River."

The Zoning Board of Appeals reviewed and approved the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Brown, seconded by Mr. Hemmer, to approve the 75ft. variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Matelski stated that the Zoning Board of Appeals did a good job working with the applicant.

ADJOURN

Motion by Mr. Hemmer, to adjourn. Motion carried. Meeting adjourned at 9:52am.



Mary Street, Secretary