

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING  
WEDNESDAY, MARCH 26, 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, Russell Crawford, Cheryl Crawford, Timothy Holt, Luke Klotz

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. Brown, to accept the agenda as presented. Motion carried unanimously.

**APPROVAL OF MINUTES**

Minutes from the February 26, 2014 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Brown, seconded by Mr. Hemmer, to approve the minutes as presented. Motion carried unanimously.

**PUBLIC HEARING & ACTION ON REQUESTS**

**Luke Klotz**

Requests a 40ft. front setback variance and a 2ft. side setback variance for construction of boat well cover in a Lake and Stream Protection (P-LS) zoning district. The property is located at 3350 Nabanois Trail, Tuscarora Township, Section 19, parcel #162-I41-006-004-00. A 40ft front setback and a 5 ft. side setback is required in this zoning district.

Mr. McNeil stated the request is for a boat well cover. Mr. McNeil stated the cover is proposed at the edge of the high water mark which establishes the front lot line. Mr. McNeil stated a 40ft. front setback variance is being requested. Mr. McNeil stated a 5ft. side setback is required and the applicant is requesting approval to place it 3ft. from the side lot line.

Mr. Klotz stated this is an open boat well and he would like to construct a roof which is similar to others in the area. Mr. Klotz stated a permit for the boat well has been approved by Army Corps of Engineers and the DEQ. Mr. Klotz stated the boat well will be completed this spring.

Mr. Freese asked if there is any further correspondence other than the two letters that have been received. Mr. McNeil stated no.

Mr. Freese asked for public comments. Mr. Holt stated he owns the adjacent parcel to the south and he believes this boat well cover will be too close. Mr. Holt stated Mr. Klotz could still build this structure and meet the setback requirements. Mr. Holt stated the boat well cover could have a 2ft. eave that would extend to his parcel. Public comment closed.

Board held discussion. Ms. Street stated her concern that the drawing is not clear. Mr. Freese asked if the old boat well has been filled in. Mr. Klotz stated that he is in the process of filling it in. Mr. Klotz referred to the plot plan and stated that the dashed line represents the old sea wall and the solid line represents the new sea wall. Mr. Klotz stated the wall against the river and the wall going towards the road is in and the other walls are not in yet. Mr. Klotz stated the contractor had to stop working this winter due to the frost. Mr. Freese noted that Ms. Street was not able to find the boat well because the old boat well was filled in.

Mr. Freese stated he has a problem with the boat well in its entirety. Mr. Freese stated the sea wall is a structure and he has reviewed this definition with legal counsel and they agree that it is a structure and therefore it is regulated under our ordinance. Mr. Freese stated the sea wall should meet the setback requirements.

Mr. Freese stated the applicant has been granted permits from the DNR and Army Corps of Engineers for the boat well. Mr. Freese stated the DNR and the Army Corps of Engineers can not override zoning.

Ms. Street noted that a new boat well is being constructed and questioned why it has to be 3ft. from the property line. Ms. Street also questioned why the boat well has to be 40ft. deep. Mr. Freese stated the old boat well was a legal non-conforming structure and since it was filled in there is no basis to reconstruct the boat well or the boat house without a variance being granted.

Mr. McNeil stated that up to this point, and pending a Zoning Board of Appeals determination, sea walls have not been recognized as structures. Mr. Freese stated he plans for the Zoning Board of Appeals to make a determination tonight that a sea wall, under the definition in the Zoning Ordinance, is a structure. Mr. Brown stated if someone owns a 100ft. lot, the sea wall would have to meet setback requirements which would mean erosion would be going back into the river. Mr. Freese stated the regulation can be amended to allow the sea wall without a variance. Mr. Freese noted that a 40ft. setback variance would also be necessary. Mr. Brown stated that every application that comes in will require a variance. Mr. Freese stated he will be discussing this issue with the Planning Commission at a future meeting. Discussion was held.

Mr. Moore stated he does not have an issue with the boat well but stated it does not need to be 3ft. from the property line. Mr. Moore stated there should be some consideration for the depth of the boat well. Mr. Freese noted that there was a previous request where the Zoning Board of Appeals established the fact that the high water mark would not be the perimeter of the boat well and that the porch would not be too close to the boat well. Mr. Freese stated almost all covered boat houses that have been granted variances by the Zoning Board of Appeals have been a reconstruction of an existing boat house. Mr. Freese stated the Zoning Board of Appeals has not been approving new boat houses. Mr. Moore stated there was one that the Zoning Board of Appeals allowed. Mr. Freese stated the one that was allowed was in an area where there were many other boat houses and it did not block any neighbor's views. Mr. Freese stated in this area from the bridge to the launch north to Mullett Lake there are very few boat houses. Mr. Freese noted there is one across the river that is a reconstruction that the Zoning Board of Appeals approved. Mr. Freese stated there is also one boat house on the same side that appears to be new and is the same type that the applicant is proposing that has not been brought before the Zoning Board of Appeals. An audience member stated the boat house has been there since he purchased the property in 1974 and noted that there is a new roof. Mr. Freese stated this would be a legal non-conforming structure. Mr. Moore stated the 5ft. setback requirement can be met. Mr. Klotz stated the south end of the boat well is 3ft. off of the property line and the posts that are in the water and the roof will be close to 5ft. from the property line. Discussion was held regarding the location of the property line. Mr. Brown stated Zoning Board of Appeals is not able to grant a variance on a side setback without a justifiable cause. Discussion was held.

The Zoning Board of Appeals reviewed the General Findings and added the following:

5. A sea wall is a structure whether constructed of wood or steel sheeting.
6. The property is a legal non-conforming lot with 42ft. wide at the water line.
7. A boat well 15ft. wide could be constructed within the 42ft. without a side setback variance.
8. In view of the fact that a sea wall is a structure, its construction in and of itself would require a prior variance.
9. The granting of a permit by the DEQ or the Army Corps of Engineers, or both, for construction of a boat slip does not supersede the requirements of the zoning regulation regarding setbacks and construction of structures.
10. Other properties in the immediate vicinity do not have boat houses and prior variances concerning boat houses have generally been granted on the basis of the fact that they were refurbishment of existing structures.
11. Previously, Cheboygan County has never required a zoning permit for sea walls.

Mr. Brown asked how this will be handled in the regulation. Mr. Freese stated the current definition of structure is "Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, radio and TV towers, mobile homes, sheds and permanent signs, and exclude vehicles, sidewalks and paving." Mr. Freese stated a seawall is attached to the ground and could be considered similar to a foundation. Mr. Brown questioned if a building permit would be required for a sea wall. Mr. Freese stated yes. Mr. Brown asked if the county has ever issued a building permit for a sea wall. Mr. Freese stated no. Mr. Moore stated there may not be a construction code for a sea wall. Mr. Freese stated there are regulations on how to put in a sea wall through the Army Corps of Engineers and DEQ. Mr. Moore asked Mr. Klotz what direction was given by the Army Corps of Engineers and the DEQ on how to construct the sea wall. Mr. Klotz stated he submitted an application to the DEQ who then forwarded the application to the Army Corps of Engineers. Mr. Klotz explained that the application is first reviewed by the Army Corps of Engineers and if it is approved it is then reviewed by the DEQ. Mr. Moore asked if Mr. Klotz was provided any mechanical specifications for constructing the sea wall. Mr. Klotz stated the Zoning Board of Appeals has a copy of what he provided to the DEQ and Army Corps of Engineers. Mr. Freese stated the contractor will be going by the Army Corps of Engineers regulations.

Discussion was held regarding a sea wall being considered a structure and having to meet setback requirements. Mr. Moore stated he does not have an issue with the sea wall. Mr. Brown agreed with Mr. Moore and noted that a zoning permit has not been required in the past for a sea wall. Mr. Brown stated the Zoning Board of Appeals is looking at side setback variance request and a front setback variance request. Mr. Brown stated if this is voted down the applicant can't even have the boat well and he does not agree with that decision. Mr. Freese stated the Zoning Board of Appeals is not reviewing a different location for the boat well. Mr. Moore stated this should be considered two separate variance requests. Mr. Moore stated he does not have a problem with the boat well if there was only a variance request for the front setback. Mr. Freese agreed with Mr. Moore. Mr. Brown stated this request is for the cover for the boat well. Mr. Brown stated the construction of the boat well can continue.

Mr. Moore noted that as of right now the applicant does not need a zoning permit or construction permit for the boat well. Mr. Freese stated that once the Zoning Board of Appeals makes a determination, permits will be required. Mr. Freese stated the applicant started the project but it is not finished. Mr. Klotz stated that more than 50% has been completed. Discussion was held. Mr. Moore stated his concern about the regulation changing when the project is 50% completed. Mr. Brown agreed with Mr. Moore. Ms. Street stated the applicant is not asking for a boat well. Ms. Street stated the applicant is asking for a boat house. Mr. McNeil explained that if the Zoning Board of Appeals makes a determination that a sea wall is a structure then the question would be whether or not Mr. Klotz has a vested right.

Discussion was held regarding alternate options for this project. Mr. Freese stated the boat house could be constructed 12½ ft. wide which would allow for the 5ft. side setback requirement. Mr. Brown questioned if there is an option to move the boat well and the boat house to allow for a 5ft. side setback. Mr. Klotz stated the south wall will be 3ft. - 4ft. off of the south property line as it is currently planned. Mr. Klotz stated that once the posts are put inside of the boat well (along the steel in the water) it will be another 10 - 12 inches. Mr. Klotz stated that it very well could be 5ft. off of the property line. Mr. Freese noted that if the post is placed next to the sheet piling you will have to measure from this point. Mr. Klotz stated it will be close to 5 ft. Mr. Klotz stated if it is a matter of 6 inches he will have the south wall skewed further out. Mr. Freese stated if the variance is denied the structure will have to be 5ft. off of the property line. Discussion was held regarding the depth of the boat well. Mr. Brown stated he did not have an issue with the depth of the boat well. Mr. Freese stated he does not see how there can be a limitation on the depth of a boat well under the current regulation. Mr. Freese noted that in the future someone may buy a narrow lot and turn the parcel into a boat slip. The Zoning Board of Appeals members agreed there is no basis for allowing a variance for the side. Mr. Freese stated the first post that is put at the high water mark will require a 40ft. variance. Mr. Freese stated the question is whether or not there is a basis for allowing a covered structure when it has not been done in the past other than rebuilding existing structures. Discussion was held.

The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.4:

**A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:**

**23.5.4.1 That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic difficulty.**

Relative to Front Setback

- The proposed boathouse construction at the proposed location is necessary due to location of a boat slip.

***This standard has been met.***

Relative to Side Setback

- Although the property is narrow (42ft.) it is a sufficient width to allow construction without granting a side setback variance.

***This standard has not been met.***

**23.5.4.2 That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).**

Relative to Front Setback

- The requested variance is the result of actions of the current property owner due to creation of the boat house.

***This standard has not been met.***

Relative to Side Setback

- The requested variance is the result of actions of the current property owner due to reconstruction of a boat well.

***This standard has not been met.***

**23.5.4.3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.**

Relative to Front Setback

- Other modifications can be made to the property and the boat well to meet setback requirements and/or use of the boat well without a cover is not unnecessarily burdensome.

***This standard has not been met.***

Relative to Side Setback

- OR, other modifications can be made to the property and the boat well to meet setback requirements and/or use of the boat well without a cover is not unnecessarily burdensome.

***This standard has not been met.***

**25.5.4.4. That the requested variance is the minimum variance necessary to grant the applicant reasonable relief as well as to do substantial justice to other property owners in the district.**

Relative to Front Setback

- The proposed boat well cover is not necessary and does not represent a minimum variance necessary to grant reasonable relief and/or will not do substantial justice to other property owners in the district.

***This standard has not been met.***

Relative to Side Setback

- The proposed boat well cover is not necessary and does not represent a minimum variance necessary to grant reasonable relief.

***This standard has not been met.***

**23.5.4.5.. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.**

Relative to Front Setback

- Granting the variance will cause adverse impacts on the neighboring property.

***This standard has not been met.***

Relative to Side Setback

- Granting the variance will cause adverse impacts on the neighboring property.

***This standard has not been met.***

**Motion** by Mr. Moore, seconded by Mr. Hemmer, to deny the front variance request and the side 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**

Mr. McNeil stated with the discussion on record tonight, boat wells and sea walls will have to be addressed. Mr. Freese stated that the Zoning Board of Appeals made a determination that will require a permit for all sea walls as they are a structure. Mr. Freese stated the Planning Commission could recommend a change in the regulation to the Cheboygan County Board of Commissioners. Mr. Moore noted that even if there is an allowance in the Zoning Ordinance for boat wells, that does not mean the DEQ and Army Corps of Engineers will grant a permit. Discussion was held. Mr. Brown stated Cheboygan County has the longest inland water route in the midwest. Mr. Brown stated the Planning Commission

should define shoreline structures. Mr. Freese stated sea walls could be handled separately from other structures in the Zoning Ordinance. Mr. Moore stated boat wells should also be addressed by the Planning Commission. Mr. Freese stated the Zoning Ordinance should address the distance between a boat well and a structure as there could be a safety issue.

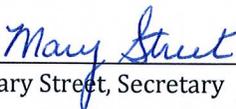
**PUBLIC COMMENTS**

An audience member asked if a sea wall is a structure and if it will have to meet the setback requirements. Mr. Freese stated a sea wall is a structure; however, the Zoning Board of Appeals is not addressing it tonight. Mr. Freese stated Mr. Klotz does not have permission for a boat house. Mr. Freese stated you can challenge the way the administrator is handling the location of a boat well and it will be brought to the Zoning Board of Appeals for a determination.

Mr. Klotz stated his contactor will continue with the sea wall and it will be completed soon. Mr. Klotz asked what will happen if someone opposes the sea wall and then the Zoning Board of Appeals tells him he can not have the sea wall. Mr. Klotz asked if he will have to remove the sea wall. Mr. Freese stated it is possible. Mr. Klotz asked how that can be possible when there was no zoning permit required by Cheboygan County. Mr. Freese stated if the sea wall is challenged it would be reviewed by the Zoning Board of Appeals and they would render a decision based on the discussion tonight. Mr. Freese explained that generally a property owner would not be forced to remove a structure that has already been built when there has been an administrative approval. Mr. McNeil stated this would be a matter of vested right. Discussion was held.

**ADJOURN**

**Motion** by Mr. Brown, to adjourn. Motion carried. Meeting adjourned at 8:25pm.

  
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Mary Street, Secretary