

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, SEPTEMBER 25, 2019 AT 7:00PM
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

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

Members Absent: John Thompson

Others Present: Michael Turisk, Carl Muscott, Cal Gouine, James Chase Caldwell, David Hansen, Debbie Willey, Russell Crawford, C. Maziasz, Michelle Freeman, Doug Rozek, Jim Brown, Renee Brown

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. Mr. Freese stated that “Discussion Regarding Proving Practical Difficulty For A Dimensional Variance Request” under New Business will be discussed prior to Public Hearing and Action of Requests. **Motion** by Mr. Moore, seconded by Mr. Freese, to accept the agenda as amended. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

APPROVAL OF MINUTES

Minutes from the August 28, 2019 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the minutes as presented. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

Discussion Regarding Proving Practical Difficulty For A Dimensional Variance Request

Mr. Freese stated that he would like to review the standards and procedures that must be followed in making a decision on a variance request. Mr. Freese asked each of the Zoning Board of Appeals members to follow along with him with the template attached as enclosure A that has been provided to each member.

Mr. Freese explained that the first item of importance is the general findings, which is the listing of all the general pertinent facts pertaining to the request. Mr. Freese explained that the members should review each of these statements and make sure that they agree that they are accurate as they are relevant to the request. If they feel that they are not accurate or do not pertain to the request under consideration then they should make their views known and allow discussion to resolve any doubts. They should also offer any additional general findings of fact that they feel are applicable.

Mr. Freese stated the next thing to be decided upon is the question of whether the five factors under section 23.5.4 are met. Mr. Freese explained that to help clarify each of the questions under section 23.5.4, the facts in support or denial of the standards are broken into two groups A & B. An introductory sentence precedes each grouping to help explain and simplify how each group of facts relates to meeting the standard. Facts listed under “A” support the standard having been met. Facts listed under “B” deny the standard having been met. The standards are 23.5.4.1, 23.5.4.2, 23.5.4.3, 23.5.4.4 and 23.5.4 and not the explanatory sentences that follow the “A” or “B”.

Mr. Freese stated that any member of the Zoning Board of Appeals can disagree with any of the facts listed under A or B or may suggest additions or deletion of any of the facts, but the suggestions should be brought up in a timely manner so they may be discussed and added, changed or deleted, but once agreed upon, if the facts listed in “A” are agreed to be accurate and pertinent then the standard under consideration **has been met**. If the facts listed in “B” are agreed to be accurate and pertinent then the standards under consideration **has not been met**.

Mr. Freese went over a few specific factors which should be considered when making a determination whether each subsection under 23.5.4 have been met.

23.5.4.1 - Factors listed to be considered under this section are narrowness, shape, water or topography, however, additional items which must be considered include septic and well location and necessary setbacks from these items. Nonconformities are not considered as having been caused by the applicant. If alternatives to granting a variance are available regardless of how costly or how not aesthetically pleasing, they variance cannot be granted.

23.5.4.2 – Any changes in topography created by the applicant such as raised gardens, patios or other landscaping and changes to the waterfront such as creation of a boat well or construction of a boat house are considered as being self-created unless found to be nonconforming.

23.5.4.3 – A situation whereby regulations might be unnecessarily burdensome might be where complying with setbacks would not leave enough buildable area for a structure to meet standards of the regulation.

23.5.4.4 – An example of the minimum variance would be when dwellings on either side of the lakefront property are located within the front setback then the average of the distance of these dwellings is averaged in order to determine the variance for the front setback for the dwelling in the center rather than allowing the dwelling to be placed as close to the water as the dwelling encroaching furthest into the setback.

23.5.4.5 – If the majority of the other properties in the general area have the same features and allowed structures, then allowing the applicant the same would not be considered as having an adverse impact on the surrounding properties. This might justify allowing a variance for the same features.

As a general statement the cost of alternatives or their esthetic impacts cannot be a consideration in granting a variance.

PUBLIC HEARING & ACTION ON REQUESTS

Debra Willey – Requests a 19 ft. front setback variance for construction of a garage and an addition to single family dwelling in a Commercial Development (D-CM) zoning district (where a 25 ft. front setback is required). The property is located at 6053 Prospect St. in Tuscarora Township; Parcel No. 161-131-006-005-00; Section 24.

Mr. Turisk reviewed information included in the staff report.

Mr. Freese asked for public comments. Mr. Muscott pointed out that additional parking requirements generated by this construction would interfere with traffic on Prospect Avenue and also with parking for the funeral home on the other side of Prospect Street.

Ms. Willey stated that arrangements had been made for off-site parking for any overflow requirements and that they had made arrangements to share her parking areas with Lintz Funeral Home in the event of a funeral. Public comment closed.

The Zoning Board of Appeals revised the General Findings. The Zoning Board of Appeals revised #5 “The next door neighbor was granted a variance for a porch addition into the front setback in 2015. The Zoning Board of Appeals added the following to the General Findings:

8. A garage is an accessory structure common to this area.
9. The garage accessory to the dwelling of the east extends to within one foot of the front setback line.
10. The area to the east of the proposed garage site is occupied by the drain field.

The Zoning Board of Appeals revised and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

David Hansen/James and Kaylin Caldwell – Requests a 3 ft. 8 in. side setback variance for construction of an addition to a single family dwelling in a Lake and Stream Protection (P-LS) zoning district (where an 8 ft. side setback is required). The property is located at 8991 N. Canal Dr. in Benton Township; Parcel No. 105-L29-000-028-00; Sections 18 and 19.

Mr. Turisk reviewed the information included in the staff report.

Discussion was held. Mr. Freese discussed alternative locations for the proposed addition, however, it could not be determined whether space available would allow movement of the addition approximately 4’ to the north. Applicant requested the matter be tabled until October 23, 2019 to verify actual distances on the site plan. **Motion** by Mr. Freese, seconded by Mr. Moore, to table until October 23, 2019. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

James Brown – Requests a front setback variance of 26 ft. 6 in. to cover two existing decks accessory to a single family dwelling in an Agriculture and Forestry Management (M-AF) zoning district (where a 50 ft. front setback is required). The property is located at 7066 Mc Donald Rd. in Benton Township; Parcel No. 104-029-100-018-00; Section 29.

Mr. Turisk reviewed information included in the staff report.

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

Mr. Freese stated that most dwellings in the area extend into the front setback to an extent comparable with that requested by the applicant and in fact the structure immediately across McDonald Road extends into the right of way.

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

6. The dwelling, including the porches, are legal nonconforming structures as they were constructed prior to zoning.
7. Overhanging roofs on a permitted structure can extend two (2) feet into a setback.

The Zoning Board of Appeals revised 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. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

Michelle Freeman-Keyser Industries/Indian River Trading Post – Requests a variance from section 17.19.8.1.B of the Zoning Ordinance (that indicates that the area of an electronic sign surface shall not exceed 75% of the total sign surface) to replace the existing menu board with a new digital menu board with an electronic surface greater than 75% of the total sign surface. The property is zoned Commercial Development (D-CM) and located at 6153 M-68 Hwy. in Tuscarora Township; Parcel No. 161-025-200-044-00; Section 25.

Mr. Turisk reviewed the information included in the staff report.

Ms. Freeman presented information regarding the application, proposed plan and changes in current sign technology.

Mr. Freese asked for public comments. Mr. Muscott stated that technology has caught up with the Zoning Ordinance. Mr. Muscott stated that this sign will be less obtrusive and this is driven by technology and worthy of a variance. Public comment closed.

The Zoning Board of Appeals reviewed the General Findings and added “Application of the .75 factor to the existing 23sq. ft. sign would allow an electric sign surface of 32.25 sq. ft.” as General Finding #9. The Zoning Board of Appeals reviewed and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. The Zoning Board of Appeals added “The sign is located on a driveway, screened completely on side by the building and on the opposite side by a fence and vegetative screening, thus not allowing the sign to be viewed from adjacent properties.” as General Finding #10. **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. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

Review and Revision of Zoning Board of Appeals Rules of Procedure

Ms. Sherwood suggested changing the last sentence of section 3.5 to “He or she shall also perform such other duties as may be assigned or delegated to them by the Chairperson of the ZBA.” Discussion was held regarding section 4.4.

Mr. Freese stated that a new section 4.6 should be added:

4.6 Meeting Cancellation

1. Meetings may be cancelled by the Director of Planning & Zoning after consulting with the Chairman, in the event that no new business is proposed or there is no old business that has been tabled to the date of the proposed meeting.

2. Meeting may be cancelled by the Chairman after consultation with the Director of Planning & Zoning in the case of severe inclement weather or other natural disaster.

Mr. Freese stated that the existing section 4.6. will be renumbered to 4.7. Mr. Freese stated that this sentence is to be revised to "4.7 Meeting Attendance. Each regular member of the ZBA shall attend all regular and special meetings of the ZBA, unless excused by the Chairperson for good cause. Two (2) unexcused absences, consecutive or nonconsecutive, by a regular member of the ZBA can serve as a basis for removal from the Zoning Board of Appeals by the Cheboygan County Board of Commissioners following notice and a hearing."

Mr. Freese stated that a new section 3.7 is to be added:

3.7 Training. Four (4) hours of career development training are required yearly. In house classes scheduled by the Planning Director shall count toward this requirement. Outside training may also count in whole or in part toward this objective if approved by the Planning Director.

Mr. Freese stated that the Planning Commission and the Zoning Board of Appeals will be meeting on 10/02/19 for a training session with Bryan Graham. Discussion was held.

ZBA COMMENTS

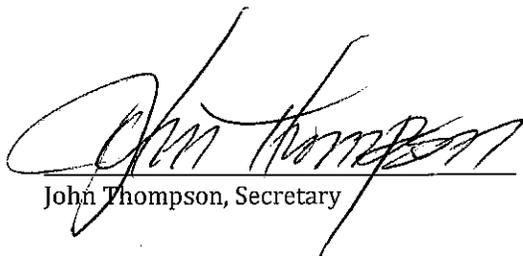
Mr. Moore questioned what is the justification for a 50ft. front setback in the Agriculture and Forestry Management Zoning District. Mr. Moore noted that a farmhouse that was built prior to zoning being enacted in Cheboygan County most likely does not meet the 50 ft. front setback requirement. Discussion was held.

PUBLIC COMMENTS

Mr. Muscott stated that he agrees with Mr. Moore and he believes that there are setbacks and other dimensional requirements in the ordinance that are arbitrary. Mr. Muscott stated that setbacks were originally designed for fire safety. Mr. Muscott stated that the American Sign Association has a model ordinance and our lumens for LED signs are far higher than what the American Sign Association recommends. Discussion was held.

ADJOURN

Motion by Mr. Moore to adjourn. Motion carried. Meeting adjourned at 9:29pm.



John Thompson, Secretary