

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, JULY 26, 2017 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, Carl Muscott, Cal Gouine, Karen Johnson, Russell Crawford, Cheryl Crawford, John F. Brown, Kevin C. Tucker, Charles Cassie, Nancy Daniel, Deborah Hughes, Michael Hughes, James Quinlan, Gary Drolshagen, Patrick Kennedy, Tim Daniel

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 June 28, 2017 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Freese, seconded by Mr. Hemmer, to approve the minutes as presented. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Patrick and Darleen Kennedy - Requests a 104 ft. front setback variance for a porch addition to a dwelling in a Natural Rivers Protection (P-NR) zoning district. The property is located at 6758 Milligan Creek Trail, Forest Township, Section 6, parcel #231-006-300-003-00. A 150 foot front setback is required for the subject lot in this zoning district.

Mr. McNeil stated that this is a request for a 104 ft. setback from the high water mark of the Milligan Creek for a porch addition to a dwelling the Natural Rivers Protection zoning district. Mr. McNeil stated that a setback of 150 ft. from the high water mark of the Milligan Creek is required.

Mr. Kennedy stated that they would like to build a sun porch for his mother and they need a variance to build closer to Milligan Creek.

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

Mr. Freese stated that along the side street all the lots are narrow lots. Mr. Freese stated that they are all non-conforming lots in that the Natural Rivers Protection District which has a 150ft. front setback requirement. Mr. Freese noted that none of the lots are even 150ft. deep. Mr. Freese stated that any type of construction on these lots would require a variance. Mr. Freese stated that the first house to the south which is within 47ft. of the river. Mr. Freese stated that the fourth house has built all the way down to the river. Mr. Freese stated that the fifth house is 104ft. from the river. Mr. Freese stated that in view of the other parcels in the area, it appears that they are as close as or closer to the water than what the applicant is requesting.

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

5. The entire parcel lies within the 150ft. setback requirement in this district.
6. The adjacent parcels lie within in 48ft. of the high water mark. One parcel is built all the way to the water.

The Zoning Board of Appeals reviewed and approved 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 unanimously.

Gary Drolshagen - Requests a 184 square foot floor area variance for a private storage building in a Lake and Stream Protection (P-LS) zoning district. The property is located at 9885 South River Road, Benton Township, Section 20, parcel #104-020-100-010-07. A private storage building is limited to a floor area of 1,600 square feet for the subject lot in this zoning district.

Mr. McNeil stated that the applicant is requesting an 184sf variance for a private storage building in the Lake and Stream Protection Zoning District. Mr. McNeil stated that private storage buildings are buildings that are not accessory to a dwelling. Mr. McNeil stated that the ordinance limits the square footage of private storage buildings on properties that are 2 acres or less for the Lake and Stream Protection Zoning District to 1600sf. Mr. McNeil stated that the applicant has been approved for a permit for a 36ft. x 42ft. private storage building. Mr. McNeil stated that the applicant is seeking to put a 10ft. x 20ft. lean-to on the private storage building. Mr. McNeil explained that the lean-to is also a private storage building use and takes the square footage to 1784sf which is 184sf over what is allowed by the ordinance for that use in that zoning district for a piece of property that size.

Mr. Drolshagen stated that because he is limited to a specific amount of square footage, he needs a little more room and the lean-to will be on the back side of the pole barn where it will not be visible to anyone.

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

Mr. Freese stated the regulation governing the private storage building is the result of many variance requests reviewed by the Zoning Board of Appeals. Mr. Freese stated that a lot of thought was put in the amendment regarding the amount of square footage that should be allowed. Mr. Drolshagen noted that he lives in the house on the adjacent parcel to the pole barn. Mr. Freese asked if Mr. Drolshagen owns the parcel with the house. Mr. Drolshagen stated that his fiancé owns the parcel. Mr. Freese stated that with the second parcel it would be a total of 1.75 acres which is still within the 2 acre limit that this regulation governs. Discussion was held. Mr. Moore noted that once Mr. Drolshagen is married and if both names are on the deeds, a variance will not be necessary for the lean-to. Mr. Moore stated that all the properties will need to be combined.

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. 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.

Tim Daniel - Requests a waiver from the side setback screening requirement, a 17 ft. front setback variance, and 3 foot side setback variance for a private storage building and a 4 foot front setback variance for a ground decking in a Lake and Stream Protection (P-LS) zoning district. The property is located at 1314 Topinabee Shore Drive, Mullett Township, Section 30, parcel #130-013-006-007-00. A private storage building must be screened from view of the side property lines with a solid evergreen hedge with a minimum height of six (6) feet or privacy fence with a minimum height of 6 feet if within 30 feet of a side property line in this zoning district. A 50 foot front setback is required for a private storage building on subject lot this zoning district. A 5 foot side setback is required for a private storage building on subject lot this zoning district. A 25 foot front setback is required for ground decking and patios without railings which are less than thirty (30) inches above the natural grade in this zoning district.

Mr. McNeil stated that the applicant has a private storage building in a Lake and Stream Protection Zoning District. Mr. McNeil stated that an addition and decking has been built onto the private storage building. Mr. McNeil noted that decking requires a 25ft. setback from the high water mark. Mr. McNeil noted that the notice stated that a 4ft. front setback is being requested. Mr. McNeil stated that after the inspection, he determined that a 1ft. front setback is needed. Mr. McNeil stated that a 5ft. side setback is required and the addition is 2ft. from the side lot line so a 3ft. side setback is being requested. Mr. McNeil stated that this is a private storage building which requires a 50ft. front setback from the high water mark. Mr. McNeil stated that the addition to the building has been placed 33ft. from the high water mark. Mr. McNeil stated that a 14ft. front setback variance would be required for the private storage building. Mr. McNeil stated that in the Lake and Stream Protection Zoning District, private storage buildings that are placed 30ft. or closer to the lot line requires a 6ft. high fence or hedge to screen the building on the side property lines. Mr. McNeil stated that Mr. Daniel is requesting a waiver from the screening requirement.

Mr. Tucker stated that he will be speaking on behalf of the applicant. Mr. Tucker stated that he appreciates Mr. McNeil's efforts to try to find a solution to this issue however they have a disagreement to where the high water mark starts. Mr. Tucker presented photos to the Zoning Board of Appeals. Mr. Tucker stated that the character of this lot in this setting dictates the use. Mr. Tucker stated that this series of lots is unique (10-12 parcels) and it is hard to apply the current zoning requirements. Mr. Tucker stated that the first photo is from the lake toward the deck and storage building. Mr. Tucker stated that the distance from the stake in the water to the deck is 25ft. and meets the requirement. Mr. Tucker stated that Mr. McNeil measured from the top of the boulders as opposed to a reasonable location of the high water line. Mr. Tucker stated that the facts establish that they do have the 25ft. that is required by the ordinance. Mr. Tucker presented a revised drawing that reflects that actual footage from the water line to the existing building. Mr. Tucker stated that there is 37ft. when measured from the high water line to the existing building. Mr. Tucker stated that this does not comply with the 50ft. setback, but in 2012 the Zoning Board of Appeals granted a 12ft. front setback variance.

Mr. Tucker stated that based upon what they believe to be the appropriate measurement, they are 1ft. short. Mr. Tucker stated that this is starting from a vague, unknown point which is called the high water mark. Mr. Tucker stated that we are dealing with a steep rock wall and it is hard to determine where the high water mark is located. Mr. Tucker stated that if the variance granted in 2012 only applies to the existing building and not the additional storage, then he is asking for a variance of the same amount to apply to the existing storage room. Mr. Tucker stated that the biggest issue is where from what point do you measure the setback. Mr. Tucker stated that the variance point is undefined and best judgement is used to make this determination. Mr. Tucker stated that he believes their judgment is just as good as Mr. McNeil's judgment. Mr. Tucker stated that the better answer may be to find out what the definition is so everyone knows where to start. Mr. Tucker stated that the high water mark changes with the bodies of water. Mr. Tucker stated that Mullett Lake is known for not having a significant variation in water. Mr. Tucker stated that the structure is built 2ft. from the lot line and not 5ft. as required by the ordinance. Mr. Tucker stated that the structure on the adjacent parcel to the north is 2.5ft. from the property line. Mr. Tucker stated that this is characteristic of the nature of the lots in this area. Mr. Tucker referred to photo #6 and stated that this lot is close to Mr. Daniel's lot. Mr. Tucker stated that all these properties are used from a zero tolerance setback from the lot line. Mr. Tucker stated that everyone gets along well and the properties are nicely maintained.

Mr. Freese stated that the ordinary high water mark is that point at which upland vegetation transitions to water type vegetation which is due to wave action. Mr. Freese stated that in this case you have a situation where the normal circumstances have been obliterated by the addition of the rock wall and sod/grass has been planted above it. Mr. Freese stated that when he visited the site he measured 23ft. and that was looking through the rocks and you could see the water sloshing backing and forth. Mr. Freese stated if there is standing water, it is not upland vegetation moving in the water. Mr. Freese stated the high water mark is toward the building in the picture. Mr. Tucker stated that this confirms that this is a point that is extremely hard to measure by. Discussion was held. Mr. Tucker stated that he understands Mr. Freese's point of view, but it is hard to incorporate that into an ordinance that a property owner can read, understand and develop a process for utilization of the property based upon that content. Mr. Freese recognizes the fact that there is a problem from the lots south of this parcel up to the library. Mr. Freese stated that there have been many variance requests for this area. Mr. Freese stated the number of variance requests average a couple a years. Mr. Freese stated that he is also on the Planning Commission and one of his responsibilities is to determine whether the problem continues to come up from a variance standpoint would indicate the regulation may be lacking. Mr. Freese stated that he does feel that the regulation is lacking. Mr. Freese stated that he will recommend changes that would probably eliminate some or all of what is being looked at tonight. Mr. Freese noted that these are future changes. Mr. Freese stated that there are situations where buildings are closer than 5ft. and they are grandfathered in. Mr. Freese stated that he does not feel that 5ft. is needed on each lot to protect the structures that are there. Mr. Freese stated that a setback is necessary. Mr. Tucker stated the concept of the variance allows the Zoning Board of Appeals to use their judgment and discretion when dealing with these matters. Mr. Freese stated that he is still faced with what the current regulation.

Mr. Freese asked for public comments. Mr. Muscott stated that the 2012 variance was the result of an enforcement action. Mr. Muscott stated that he has personal knowledge of this lot because he looked at it when Mr. Slanec owned it and it was empty. Mr. Muscott stated that Mr. Slanec was interested in leasing the lot for \$2000 by the summer. Mr. Muscott stated that Mr. Slanec was also interested in selling the lot. Mr. Muscott stated that for a single family use it was a little expensive for the 40ft. of frontage on the lake. Mr. Muscott stated that according to the application, there are three families that share this lot. Mr. Muscott stated that this is a shared waterfront access and section 10.4.4 address widths of lots required to avoid misuse, overuse or congestion of properties. Mr. Muscott stated that he didn't always agree with the shared waterfront access section and that is one of the reasons that he did not purchase Mr. Slanec's lot. Mr. Muscott stated that Mr. Tucker's argument that the door has been opened for another variance due to the previous variance that was issued for the existing shed after enforcement action. Mr. Muscott stated that the next time an addition is built without a permit that would probably be defensible as another variance request. Mr. Muscott stated that he appreciates the Zoning Board of Appeals as they have the task of recognizing things within the ordinance that do not serve the public well. Mr. Muscott stated that he disagrees with a lot of the zoning regulations, but he attended a meeting where legal counsel advised that only 1-2% of appeals should be approved, but the 2014 and 2015 annual reports had an average of 70% approved and some were with some type of compromise. Mr. Muscott stated that this shows that Cheboygan County is not anti-growth or anti-development.

Mr. Cassie stated that he owns the property to the north of Mr. Daniel's property. Mr. Cassie stated that the property has been improved immensely since Mr. Daniel purchased it. Mr. Cassie stated that what has been done and what the applicant is proposing to do is an improvement. Mr. Cassie stated that he would prefer not to have a fence between the two parcels. Mr. Cassie stated that they are fairly close together, but there is enough room to maintain their properties. Mr. Cassie stated that from his perspective, this is a good thing.

Public comment closed.

Mr. Freese asked Mr. Daniel if he owns the parcel or are there more owners. Mr. Daniel stated that there are three

families that own this parcel. Mr. Freese asked Mr. McNeil if this is considered a shared waterfront. Mr. McNeil stated no. Mr. McNeil stated that our shared waterfront regulation are with respect to more than one dwelling that share waterfront property. Mr. McNeil stated that this is request is regarding a private storage building use.

Mr. Freese stated that it would do no good to screen these individual small parcels and it would just take up more space. Mr. Freese stated that the setback was required because of the steep incline. Mr. Freese stated that the deck could have met the setback requirement. Mr. Freese stated that the side looks like an add-on to the original building and he does not believe that a 2ft side setback is enough for a side setback. Mr. Freese stated that the Department of Building Safety requires 5ft. between dwellings. Mr. Freese stated that this is a storage building and not a dwelling. Mr. Freese stated that we wouldn't want to be anything less than 2.5ft. which would allow someone could maintain the building. Mr. Freese stated that it also reduces the problem of water coming off of the roof and landing on the neighbor's lot. Mr. Freese stated that he plans to propose to the Planning Commission a 2.5ft. setback on each lot, which would result in a 5ft. separation between buildings.

The Zoning Board of Appeals added the following to the General Findings "A steep grade exists to the rear of the parcel which precludes the structure from being placed any further to the rear." as #10. The Zoning Board of Appeals revised #4 "The applicant is seeking a 14 ft. front setback variance for a private storage building." The Zoning Board of Appeals revised #8 "The applicant is seeking a 1 foot front setback variance for ground decking without railings which is less than thirty (30) inches above the natural grade."

Mr. Thompson noted that this property look dynamite compared to 90% of the other properties in the area. Mr. Freese agreed with Mr. Thompson. Mr. Freese stated that no matter how good it looks, it is in violation of the regulation.

The Zoning Board of Appeals reviewed the Findings of Fact under Section 17.18.6 and Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the variance for the front setback to the storage building, deny the variance on the side setback to the building and decking and deny the front variance on the decking based on the General Findings and the Findings of Fact under Section 17.18.6 and Findings of Fact under Section 23.5.4. Motion carried unanimously.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

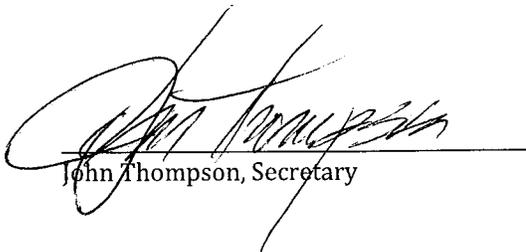
No comments.

PUBLIC COMMENTS

No comments.

ADJOURN

Motion by Mr. Moore to adjourn. Motion carried. Meeting adjourned at 7:52pm.



John Thompson, Secretary