

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING**  
**WEDNESDAY, NOVEMBER 23, 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, Mike Ridley, Bruce Biebuyck, Russell Crawford, Cheryl Crawford, Carl Muscott, Tony Matelski, Mary Smit

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. Hemmer, seconded by Mr. Thompson, to accept the agenda as presented. Motion carried unanimously.

**APPROVAL OF MINUTES**

Minutes from the October 26, 2016 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Thompson, seconded by Mr. Moore, to approve the minutes as presented. Motion carried unanimously.

**PUBLIC HEARING & ACTION ON REQUESTS**

**Tuscarora Township**

Requests a 9 ft. rear setback variance for a storage building in a Lake and Stream Protection (P-LS) zoning district. The property is located at 6566 Oak Glen St., Tuscarora Township, Section 24, parcel #161-M57-000-007-00, #161-M57-000-009-00, #161-M57-000-010-00, #161-M57-000-023-00. A 12 ft. rear setback is required in this zoning district.

Mr. McNeil stated that in July 2015, the Zoning Board of Appeals approved a rear setback variance for a storage/utility building within Devoe Beach Park. Mr. McNeil stated that subsequently the township put the building in a different location and is now seeking a variance for the current location. Mr. McNeil stated that a 12ft. rear setback variance is required and the applicant is requesting a 9ft. rear setback variance.

Mr. Ridley stated that in 2014, Veteran’s Pier set aside the money for this shed. Mr. Ridley stated in 2015, Veteran’s Pier put a down payment on a 12ft. x 24ft. storage building. Mr. Ridley stated that the original variance application was for a 12ft. x 24ft. storage building. Mr. Ridley stated that in May 2015 the Park Commission took over and approved a 12ft. x 24ft. storage building. Mr. Ridley stated the variance application was reviewed by the Zoning Board of Appeals in July 2015. Mr. Ridley stated that there has been a lot of concern about the size of the building and the building ended up being 12ft. x 20ft. which is smaller than what was requested. Mr. Ridley stated that they did get a building permit for this storage building. Mr. Ridley explained that the storage building was placed in its current location because of the clearance between the parking bumpers in the parking lot. Mr. Ridley noted that the parking bumpers are 42ft. bumper to bumper. Mr. Ridley stated that he does not believe there is an impact on the neighbor based on the location where it was placed. Mr. Ridley stated it is safer in the location where it was placed. Mr. Ridley stated that the building is wired in. Mr. Ridley explained that the new placement of the storage building was a judgement call.

Mr. Freese stated that the regulation requires a 22ft. wide maneuvering lane and a 20ft. wide parking lane. Mr. Freese stated that the distance from the edge of the blacktop to the other edge of the blacktop in front of the building is 42ft. 3in. and meets the requirements of the ordinance. Mr. Freese stated that the rest of the parking lot also meets the regulation. Mr. Freese stated that the location of the property line has not been determined. Mr. Freese noted that the storage building, in its current location, is 28in. from the cyclone fence on the northeast corner and 4ft. 7in. from the fence on the southeast corner. Mr. Freese stated that Zoning Board of Appeals required that the building be moved to the edge of the blacktop which still allowed exactly what the regulation allows for with regards to parking and maneuvering.

Mr. Thompson stated he spent a lot of time at the site and he can understand how this can happen. Mr. Thompson stated if he was the one placing the building, he would have placed it in this location as well. Mr. Thompson stated that at the last meeting there was a discussion regarding snow load and the neighbor’s yard and fence. Mr. Thompson stated that snow will not be an issue unless we have 25ft. of snow.

There were no public comments.

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

5. A parking space length of 20ft. and a maneuvering lane width of 22ft. (for a total of 42ft.) are required under section 17.5 of the ordinance.
6. Blacktop parking lot width in front of the storage building is 42ft. 3in.

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.

**Bruce Biebuyck**

Requests a 3ft. side setback variance, a 5 ft side setback variance and a 1 foot front setback variance for a deck addition to a dwelling in a Lake and Stream Protection (P-LS) zoning district. The property is located at 1430 Topinabee Shore Drive., Mullett Township, Section 30, parcel #130-L05-001-013-00. A 5 ft. side setback is required for this lot in this zoning district. A 9 ft. front setback is required for the deck in this zoning district pursuant to Section 10.4.8. of the Cheboygan County Zoning Ordinance #200 which reads as follows: On property where existing structures on both sides are within two hundred (200) feet of a new building wall and said structures do not meet waterfront setback standards, the required setback need not be greater than the Average setback on the adjoining developed lots.

Mr. McNeil stated that the applicant is seeking 3 variances for a deck that has been built. Mr. McNeil stated that the ordinance allows the front setback to be based on the average of the setback of structures on either side. Mr. McNeil stated that he determined that the subject site would require a 9ft. front setback. Mr. McNeil stated that the structure is actually 8ft. from the front property line. Mr. McNeil stated that a 1ft. front setback variance is being requested. Mr. McNeil stated that the north side of the building is built right up to the property line. Mr. McNeil stated that there is a 5ft. side setback requirement for this lot. Mr. McNeil stated that a 5ft. variance is being sought on the north side lot line. Mr. McNeil stated that the lot is 16ft. wide and the deck is 14ft. wide. Mr. McNeil stated there is a 2ft. existing side setback. Mr. McNeil stated that a 3ft. variance from the 5ft. requirement is being requested on the south side.

Mr. Biebuyck stated he is requesting a variance to allow him to have a patio set and barbecue. Mr. Biebuyck explained that his insurance company required that the existing steps be removed and replaced with a 36in. x 36in. landing. Mr. Biebuyck stated that he looked at other decks in the area before building his own deck. Mr. Biebuyck stated that he kept his deck further back than the deck to the north. Mr. Biebuyck stated that the deck is 14ft. x 11ft. which is big enough for a patio set and a barbecue.

Mr. Freese asked if there is any additional correspondence. Mr. McNeil stated that there is no other correspondence other than the additions that were added to the updated exhibit list.

Mr. Freese asked for public comments. Mr. Richards stated that when he bought the property 10 years ago he believed that property owners could not change the footprint of their property. Mr. Richards stated that his realtor advised him of this requirement and this was a primary factor in the decision to buy his property. Mr. Richards stated that he later learned that you can change the footprint, but there are stringent codes that you must follow. Mr. Richards stated he felt secure in knowing the zoning laws. Mr. Richards stated that a couple of years ago Mr. Biebuyck purchased property and had an opportunity to observe the 10 cottages that are family owned. Mr. Richards stated that the families all know each other and there is a great amount of respect for one another. Mr. Richards stated that if a property owner is going to do anything to your property or anything that may be an imposition to the neighbors such as a party, you talk to the neighbors. Mr. Richards stated that this is the way the neighbors operate. Mr. Richards stated that earlier this year Mr. Biebuyck purchased the property next to his property. Mr. Richards stated that he believed that they would become friends, but a month after buying the property, Mr. Biebuyck built this oversized, imposing deck. Mr. Richards stated that Mr. Biebuyck had an opportunity to observe the community and that Mr. Biebuyck did not discuss the deck with him. Mr. Richards stated that Mr. Biebuyck's deck is less than 5ft. from his deck and violates setbacks on three sides. Mr. Richards explained that the neighbor to the south has a set of stairs that comes out four feet. Mr. Richards stated that this is an advantage for Mr. Richards, otherwise it would be a 3ft. setback violation. Mr. Richards stated his concerns regarding Mr. Biebuyck's deck severely compromising his privacy and property value. Mr. Richards stated that not only is the deck imposing in terms of its size but it is also imposing in terms of its level. Mr. Richards stated that at one time he had shrubs which allowed for a great deal of privacy between the two houses in spite of their close proximity because they were at different levels. Mr. Richards explained that due to Mr. Biebuyck's deck, there is a significant feeling of claustrophobia that would affect anyone who would consider buying his property in the future. Mr. Richards stated that

this deck will negatively impact his property value and his neighbor's property values. Mr. Richards stated that the deck has caused his wife to want to come up as much anymore.

Mr. Richards stated that Mr. Biebuyck is also illegally renting on a short term basis. Mr. Richards stated that Mr. Biebuyck should have said something to him about it. Mr. Richards stated that not only is his neighbor sitting 7ft. away from him on the deck, now there are strangers that he does not know. Mr. Richards stated people have knocked on his door asking him to move his vehicle so they can get their truck out. Mr. Richards stated there have been kids running up and down his dock without permission. Mr. Richards explained that the renters have also asked if they can use other neighbor's recreational equipment. Mr. Richards stated there have been power boats parked on the shore in front of his cottage. Mr. Richards stated there have been disturbances late at night. Mr. Richards stated that several neighbors have commented to him about noise in the evening. Mr. Richards explained that due to the close proximity it does not take much to disturb someone else. Mr. Richards stated the most important issue for him is the deck due to the privacy issue. Mr. Richards stated that it seems to him that Mr. Biebuyck doesn't think that the rules apply to him, in terms of being a good neighbor and in terms of following the zoning code. Mr. Richards stated that Mr. Biebuyck has taken the approach of don't ask for permission but beg for forgiveness. Mr. Richards stated that this deck has already been constructed and if the Zoning Board of Appeals does not grant the variance, the deck will have to be torn down or reduced in size. Mr. Richards explained that he is opposed to this request. Mr. Richards requested that the Zoning Board of Appeals deny the variance request and require that the deck be removed or modified to be in complete compliance with the zoning code.

Mr. Muscott stated that this neighborhood is unique in Topinabee with boathouses with virtually zero clearance between the buildings. Mr. Muscott stated that none of the buildings in this area are conforming. Mr. Muscott stated his concerns regarding the buildings being close together and that setbacks are necessary for fire safety reasons. Mr. Muscott stated that no one enjoys the setbacks now and he would hate to see it made worse by any situation. Mr. Muscott stated this situation is unique to the community and he would like to see it remain as a non-conforming use but he would not like to see further ingress of residential use any more than necessary.

Public comment closed.

The Zoning Board of Appeals reviewed the General Findings. The Zoning Board of Appeals revised General Finding #3 "The deck addition measures 11 ft. deep and 14 feet wide."

Board held discussion. Mr. Freese stated that the front setback is an average of the two setbacks on either side. Mr. Freese stated that this would require a 1ft. reduction in the size of the deck. Mr. Freese stated that the regulation has been created so it is reasonable. Mr. Freese stated that he believes a 1ft. reduction will not hurt anything as far as the use of the deck. Mr. Freese stated that regarding the side setback, the deck is not encroaching any further on the side setback than what the building is already encroaching. Mr. Freese stated that it is not reducing the accessibility for fighting fires. Mr. Freese stated that the size of the deck will not change the ability to get through this area. Mr. Freese stated there is a problem as far as the short term rental but that is not within the Zoning Board of Appeals purview. Mr. Freese stated that the ability to get along with neighbors is a problem and happens all the time and is not within the Zoning Board of Appeals purview. Mr. Freese stated that in Mr. Muscott's email he mentions that the use of the buildings as dwellings and the possibility of contaminating the lake with gray water. Mr. Freese stated that this is a concern but is not within the Zoning Board of Appeals purview. Mr. Freese stated that Mr. McNeil can review these concerns with the exception of getting along with the neighbors.

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

6. Cottages along this section of the beach typically range from 0ft. to 4ft. side setbacks as does this dwelling.
7. The proposed deck does not intrude into the side setback any further than does the dwelling itself.

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 Ms. Sherwood to approve the side setback variance requests and to deny the front setback 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. Biebuyck asked what does he need to do to comply. Mr. Moore stated that 1ft. is to be taken off of the front of the deck. Mr. Biebuyck asked when does this need to be completed. Mr. McNeil stated that the standard procedure is 30 days from the time you receive the notice from the Zoning Board of Appeals.

Mr. Richards stated that he does not believe that consideration was given to the property values. Mr. Richards stated he will have to see what other options are available. Mr. Richards stated that he brought his computer with him, but was unable to bring it through the front door so he was unable to show his pictures. Mr. Richards stated that this approval took \$20,000-\$30,000 off of the value of his property and he does not believe that this is fair.

An audience member stated that she is one door south of Mr. Richards and even though she is affected less him, she is still affected by this decision.

Mr. Richards stated that he understands there is an appeal process. Mr. Freese stated that there is an appeal process through the Circuit Court.

**ADJOURN**

**Motion** by Mr. Moore to adjourn. Motion carried. Meeting adjourned at 7:36pm.



John Thompson, Secretary