

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, JULY 22, 2015 AT 7:00PM
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

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

Members Absent: None

Others Present: Scott McNeil, Tony Matelski, Carl Muscott, Ryan Wilmer, David Smith, Mike Ridley, Greg Rotter, Cindy Barry

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 Ms. Street, to accept the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

Minutes from the June 24, 2015 Zoning Board of Appeals meeting were presented. Mr. Hemmer noted that John Thompson should be added as being present at the meeting and Christopher Brown’s name should be removed. **Motion** by Ms. Street, seconded by Mr. Moore, to approve the minutes as amended. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Ryan Wilmer – Requests a 100 ft. front setback variance for dwelling in a Natural Rivers Protection (P-NR) zoning district. The property is located at 6877 and 6887 River Road., Ellis Township, Section 1, parcel #210-001-300-010-00 and #210-001-300-011-00. A 200 ft. front setback is required in this zoning district.

Mr. McNeil stated the applicant is requesting a 100ft. setback variance and the subject property is located in a Natural River Protection zoning district where a 200ft. front setback from the river’s edge is required. Mr. McNeil stated that Mr. Wilmer is requesting that a 100ft. setback be allowed.

Mr. Wilmer stated he is in the process of purchasing the property and he was understood that there was a 100ft. variance approved in 2001. Mr. Wilmer stated he is not sure that there is enough room to do what he wants to do.

Mr. Freese asked if there is any additional correspondence. Mr. McNeil stated there is no additional correspondence other than the addition of the e-mail that had already been distributed. Mr. Freese asked for public comments. There were no public comments. Public comment closed.

Mr. Freese stated a variance was granted in 2001 but no action was taken on that construction request and no permits were issued. Mr. Freese explained that the variance approval expired after one year. Mr. Freese stated the regulation allows for an averaging of the distances to the structures on either side of the subject property to determine the variance amount that can be granted. Mr. Freese stated one side is 90ft. from the river and the other is 130ft. from the river and the average would be 110ft.

Ms. Street noted that the location of the proposed dwelling was not staked. Mr. Wilmer stated 110ft. is acceptable to him. Mr. Freese asked if Mr. Wilmer is willing to change his variance request from 100ft. to 90ft. Mr. Wilmer stated yes.

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

4. The nearest houses on either side are 90ft. and 130ft. from the river respectively.
5. Zoning Board of Appeals practice in the past has been to allow an average of the distances from the water of the nearest houses on either side to be the determining factor in granting a variance.
6. The applicant has agreed to revise his request for variance to 90ft from 100ft.

The Zoning Board of Appeals reviewed and approved the General Findings 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 unanimously.

David Smith – Requests an 8.17 ft. side setback variance for an addition to a storage building in a Commercial Development (D-CM) zoning district. The property is located at 6111 Prospect Street., Tuscarora Township, Section 24, parcel #161-131-007-003-00. A 10 ft. side setback is required in this zoning district.

Mr. McNeil stated Mr. Smith is requesting an 8.17ft. side setback variance. Mr. McNeil stated the property is located in a Commercial zoning district where a 10ft. side setback is required. Mr. McNeil stated the variance request is for an addition to an existing structure.

Mr. Freese asked if Mr. Smith would like to speak regarding his request. Mr. Smith did not attend the meeting. The Zoning Board of Appeals members discussed tabling Mr. Smith's variance request. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to table the request until the August 26, 2015 Zoning Board of Appeals meeting. Motion carried unanimously.

Mr. Smith entered the meeting.

Mr. Moore withdrew his motion to table Mr. Smith's request until the August 26, 2015 Zoning Board of Appeals meeting. Mr. Hemmer withdrew his support for Mr. Moore's motion.

Mr. Freese asked Mr. Smith if he would like to make any comments regarding his variance request. Mr. Smith stated that the Zoning Board of Appeals members and Mr. McNeil have visited the site.

Mr. Freese asked for public comments. Mr. Rotter stated he is representing the LaCoursier's who own the parcel between Mr. Smith's parcel and the bridge. Mr. Rotter stated this is a non-conforming use as Mr. Smith built the addition without a permit and now he is asking for approval for a variance. Mr. Rotter stated this was handled inappropriately. Mr. Rotter stated the LaCorursiers have had some difficulties with Mr. Smith involving the fence between the two parcels. Mr. Rotter stated Mr. Smith has also done some work on his boardwalk without a permit and the DNR approved the work after the fact. Mr. Rotter stated that this request does not meet the criteria under section 23.5.4. Mr. Rotter stated the addition does not have an adverse impact however to exceed the existing footprint is inappropriate. Mr. Rotter stated he has a picture of the way the way the building used to be. Mr. Rotter stated it was previously a storage shed to store a riding lawn mower in and now it is much larger. Mr. Rotter stated that this parcel is zoned Commercial but the adjoining parcels are Residential.

Public comment closed.

Ms. Barry stated she has worked for the Smiths cleaning cabins for over 30 years. Ms. Barry stated that Fred Smith has been at this residence for years and the shed was big enough to hold a freezer for all of the fish for the fishermen, lawn mower and tools to maintain the resort. Ms. Barry stated there was a lean to on the back of the shed that was rotting and collapsing as it was old. Ms. Barry stated they closed in four posts that were behind the shed as it was a danger to the customers of the resort as the roof was collapsing. Ms. Barry stated they put a peaked roof on instead of fixing the existing slanted roof which will keep collapsing.

Mr. Rotter presented a photo of the building prior to the work being completed.

Mr. Smith stated that the photo that Mr. Rotter is referring to was taken in 1969. Mr. Smith stated that by looking at the photo you will see corrugated metal on the back of the shed. Mr. Smith stated he took the roof off of that section and continued the roofline. Mr. Smith stated there is lattice on the sides to keep the lawn tractor and garbage cans out of the sight of the customers. Mr. Smith stated there was a buck pole at the end of the shed and he put a shed roof over it and enclosed the front side.

Mr. Freese asked if Mr. Smith is maintaining that there were support poles at the south end of the shed. Mr. Smith confirmed that there was a buck pole system and he put a 2x12 header across that and rafters down off of the original shed which was built in the early 70's. Ms. Street asked if the footprint of the building has changed. Mr. Smith stated the foundation (footprint) is still there for the original building and the shed area has never had a floor. Mr. Freese asked if the posts are the posts that were there originally. Mr. Smith stated he replaced the posts and the sides of the addition to get rid of the rotted wood and the roof that was collapsing.

Mr. Rotter stated the picture he presented is from 1986 and there is no evidence of a buck pole. Mr. LaCoursier stated that the picture was taken in 1986 when he bought the property. Ms. Barry stated that she believes the picture is from the 1960's. Discussion was held regarding the age of the picture.

Mr. Freese asked Mr. McNeil if he came across the fact that this is the replacement of a deteriorated portion of a structure during the enforcement actions. Mr. McNeil stated no and that he believes the new construction is substantial enough to not continue the non-conforming status. Mr. Freese asked Mr. Smith if the poles were removed and if new posts were put in. Mr. Smith stated yes as they were rotten. Mr. Freese stated this would be considered new construction and would not be grandfathered in.

Mr. Freese asked if there were any public comments. There were no public comments. Public comment closed.

Mr. Freese stated there has been new construction without a variance. Mr. Freese stated the question is if the construction could have been located in an alternate location which would not require a variance. Mr. Freese stated the same size addition could have been constructed on the side of the building toward the house and the setback could have been met. Mr. Moore asked if this is Commercial zoning of Village Center. Mr. McNeil stated this parcel is zoned Commercial.

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

5. The original shed was a legal non-conforming structure.
6. The lean to portion that was attached to the legal non-conforming structure was deteriorated to the point where it was entirely replaced by new construction.

The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.4. The Zoning Board of Appeals stated that standards 23.5.4.1, 23.5.4.2, 23.5.4.3 and 23.5.4.4 have not been met and standard 23.5.4.5 has been met. **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.

Tuscarora Township – Requests a 10.5 ft. rear setback variance for a storage building in a Lake and Stream Protection (P-LS) zoning district. The property is located at 6566 Oakley Ave., Tuscarora Township, Section 24, parcel #161-M57-000-007-00. A 12 ft. rear setback is required in this zoning district.

Mr. McNeil stated Tuscarora Township would like to place a storage building within 1 1/2ft. of the rear lot line. Mr. McNeil noted that a 12ft. rear setback is required in the Lake and Stream Protection zoning district. Mr. McNeil stated the applicant is requesting a 10 1/2ft. rear variance.

Supervisor Ridley stated that there is an existing structure that needs to be replaced and they do have a need for more storage as they purchased a power washer for the new pier. Supervisor Ridley stated they tried to find an alternate location for the building but determined it is best to place it in the same location as the existing building. Supervisor Ridley stated placing the proposed building in this location will not impede anyone's vision.

Mr. Freese asked for public comments. Mr. Muscott stated this is a well used area and he appreciates neighbors on both sides of the street as they put up with a lot of traffic due to the public parking. Mr. Muscott noted that there is adequate area on the south side of the parcel that would allow the setbacks to be met. Mr. Muscott questioned why a non-conforming use, even if it is deteriorating, should be allowed to be replaced with a larger non-conforming use. Mr. Muscott stated there is a lot of vacant land on the south end where the building can be placed and be aesthetically acceptable.

Mr. Rotter stated this is a good spot for the proposed building. Mr. Rotter stated he was at the park today and allowing the proposed building in the same location is the best option. Mr. Rotter stated if the building is placed at the south end it will interfere with vision.

Supervisor Ridley stated the township did consider alternate locations and placing the building to the north or the south will impede people's view.

Public comment closed.

Discussion was held regarding the fence. Mr. Freese stated the shed can be turned 90 degrees and the existing footprint could be kept. Mr. Freese stated the building could be moved toward the lake and this would allow a lesser setback. Mr. Freese stated snow would fall on the sides and not on the neighbor's fence. Supervisor Ridley explained that there would be a traffic problem if the building is turned 90 degrees as the building will now be on the asphalt. Discussion was held regarding the size of the building.

Ms. Street asked if the proposed building will replace the existing building. Supervisor Ridley stated yes as the existing building needs to be taken down.

Mr. Freese stated that by keeping the building in the same configuration it could be brought out to the black top which would increase the distance to the fence and decrease the setback distance. Mr. Moore stated there is 20ft. of parking space and 12ft. of building so the building can be pulled out further. Discussion was held. Supervisor Ridley stated that there has not been a problem with the existing building in this location and they have examined all of the options and they want it to be as close as possible to the fence. Supervisor Ridley believes that the building will stick out by moving it onto the black top. Mr. Freese explained the Zoning Board of Appeals will have to deny the variance request if it finds that that one of the standards is not met. Mr. Moore explained that one of the standards asks if this is the least amount of variance possible. Discussion was held regarding the size of the building. Supervisor Ridley and Mr. McNeil confirmed that the size of the proposed building will be 12ft. x 24ft. Mr. Thompson and Mr. Freese agreed that the proposed building will fit in this location. Supervisor Ridley stated he will amend his variance request to move the proposed building out to the edge of the black top on the west side.

The Zoning Board of Appeals revised #3 of the General Findings, "The 12ft. x 24ft. storage building will have the west 24ft. wall brought forward to the edge of the black top." The Zoning Board of Appeals approved the revised General Findings. The Zoning Board of Appeals reviewed the Specific Findings under Section 23.5.4 and revised 23.5.4.5, "Granting the variance will provide a rear setback for a new storage building where an existing storage building is located which will have an adverse impact on surrounding property, property values or the use and enjoyment of property in the neighborhood or zoning district." The Zoning Board of Appeals 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.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Muscott commended the board for compromising on the variance request for Tuscarora Township which will alleviate some of his concerns. Mr. Muscott asked if the setback area could be fenced off and used as outdoor storage. The Zoning Board of Appeals stated yes.

ADJOURN

Motion by Mr. Hemmer to adjourn. Motion carried. Meeting adjourned at 8:06pm.



Mary Street, Secretary