

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS MEETING HELD ON OCTOBER 30, 2019**

**VARIANCE REQUEST BY ZACH CUNNINGHAM**

Chair Jean Rowe called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Wednesday, October 30, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Mike Glynn, Jean Rowe, Bruce Nevins, Dave Grabemeyer, alternate Wendy Fitzgerald

OTHERS PRESENT: Building/Zoning Administrator Todd Herter, Recording Secretary Lindsay Krohne, members from the public

ABSENT: None.

**APPROVAL OF AUGUST 29, 2019 MINUTES**

Dave Grabemeyer motioned to approve the August 29, 2019 Zoning Board of Appeals minutes. Mike Glynn seconded. Motion passed by voice vote.

**EXPLANATION/REASON FOR MEETING**

Jean Rowe read the Notice of Public Hearing, explaining the reason for the public hearing:

- The request of Zach Cunningham, 9640 S. Damon Avenue, Chicago IL regarding the property addressed as 51106 3<sup>rd</sup> Street, Dowagiac, MI within the Township (Parcel No. 14-130-203-015-00) in the WD Waterfront Residential District Zoning Classification. The applicant is requesting a 1940 square-foot variance from the permitted 50% non-conforming expansion limitation contained in Section 155.501(3) of the Township Zoning Ordinance in order to permit the construction of a 2500 square-foot addition to the existing 1120 square foot house on the subject property in order to provide additional living space and garage space for a new boat. Section 15.051(3) of the Zoning Ordinance permits only 50% expansion of an existing non-conforming structure, thereby allowing a 560 square-foot addition. The addition may extend the north line of the building, which is 5 feet from the property line wherein 7 feet are required. Therefore, if any portion of an addition to the north building line is approved, a 2-foot variance from the 7-foot side yard setback requirement will also be required. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Zoning Ordinance.
- Such other and further matters as may properly come before the zoning board of appeals.

## **BUILDING/ZONING ADMINISTRATOR COMMENT**

Building/Zoning Administrator Todd Herter stated that the ordinance does allow for an expansion of a nonconforming structure, but it is only 50% of what the nonconforming structure is. He added that it only takes the footprint into account, which is basically the ground floor, allowing a 560 square foot addition without a variance.

Todd stated his opinion that there is no practical difficulty shown, and recommended the zoning ordinance be upheld. He added that if the board chooses to grant the variance, he strongly suggests they require the proposed addition be moved over from the property line to meet the current setbacks and at least make the addition more compliant with the ordinance.

## **PUBLIC COMMENT**

Applicant Zach Cunningham stated that giving them 560 square feet to build would not give his parents, who have five kids and grandkids, a chance for them all to stay together comfortably.

Eileen Cunningham stated that they have been there for a long time, and they are not building any farther back or changing anyone's view. She added that it is time to expand for their family.

Richard Cunningham stated that he understands the ordinances are rules that are very important to abide by, but he doesn't see where they would be imposing. He added that there are no neighbor's in attendance to say otherwise.

Jean Rowe closed public comment at 7:10 p.m.

## **ZONING BOARD OF APPEALS DISCUSSION**

Mike Glynn stated that one of the things they looked at is keeping in the spirit of the ordinance. He stated that a 5' side yard setback is required on a 40' wide lot, and anything over 40' wide requires a 7' side yard setback.

Mike stated that he believes the lot is 44' 6". He added that it is tough for the Zoning Board of Appeals to keep in the spirit of the ordinance, and if the lot is over 40' it requires a variance for a smaller side yard setback. Mike explained that the 40' width was picked because many properties around the lakes are 40'. He added that a 24' wide home with 1' overhangs on each side is a substantial structure, which fits very nicely on a 40' lot.

Mike stated that the structure will fit, but he's not sure about the 50% increase. He explained that they need to envision what they want their lakes to look like, and when two story homes are built with 5' side yard setbacks, you start to get that big tunnel effect. Mike added that the spirit of the Master Plan was to maintain the cozy, small cottage feel. He stated that they are allowed to build a two story structure on the entire nonconforming home. Mike stated that giving the 50% allowed by the ordinance, the addition would be appropriate to follow if the setbacks are met. He

added that he believes the addition could be moved over two feet and still serve the purpose and give the applicant some relief.

Dave Grabemeyer asked how long the lot is, finding the answer of 304’.

Jean Rowe explained that the property was difficult to find due to the house numbering of 510 and 511 being blocks away from each other.

Dave Grabemeyer stated that he is on the Planning Commission, but wasn’t on it when the 50% allowable expansion was put into place as it was years and years ago. He added that he feels that so much has changed in 30 years. He stated he believes the Planning Commission hoped there would be a group on the Zoning Board of Appeals to look at each case individually to decipher whether the 50% was meant to cover that issue.

Dave explained that when he started out, he went from 2, then to 4 kids, and now up to 19 in his family. He added that space is tight even with 2,000 square feet upstairs, when in the beginning they thought for sure they would have enough room in the future.

Dave stated that he thinks there is plenty of room to have a nice two story addition, as they are asking for, and it seems to fit in with the rest of the houses in the neighborhood.

Dave explained that his family had a reunion at a cottage in that area 35 years ago, and the home is now gone and that whole area has big beautiful houses there. Dave stated that he agrees with Todd and Mike about keeping a 7’ side yard setback, as required in the ordinance.

Bruce questioned how long the Cunningham’s have been there, and they answered around 30 years, as they bought it with family but are now sole owners.

Bruce stated when the ordinance changed from 5’ to 7’ side yard setback, no one probably told them, and he believes the owner should somehow be notified when these buildings become nonconforming. He added that people have no clue when property changes.

Richard Cunningham explained that a few houses around them built up some very big houses.

Bruce stated that he doesn’t care what it looks like, but agrees it should meet the 7’ side yard setbacks.

Jean stated that she understands there are a lot of large homes in the area, and perhaps they have the lot space for it. She added that there are more large homes than there are small homes. She stated that she agrees with Dave.

Dave Grabemeyer questioned if it would be a big deal to move the proposed addition over 2’ to meet the 7’ side yard setbacks. Zach Cunningham answered no.

Discussion followed regarding the little notch on the proposed addition and house roof. Zach Cunningham explained that it is architectural, and they didn’t want to just stack the house on top

and go straight up; they wanted to keep the front looking like the others on the lake and build up in the back so it doesn't look like a long shotgun house.

Mike asked if the porch would be covered and Zach answered yes. Mike explained that their drawing doesn't show it being enclosed.

Jean Rowe read the Five Standards of Review. Mike explained that they needed to review the standards for both requests: the setbacks and the expansion limitation.

**155.253 STANDARDS OF REVIEW.**

(A) *Granting of non-use variances.* A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are addressed.

(1) The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

5' Side Yard Setback Request: All agreed yes, it was.

Expansion Limitation over 50% Request: All agreed yes.

(2) The variance will not impair the intent and purpose of this chapter.

5' Side Yard Setback Request: All agreed yes.

Expansion Limitation over 50% Request: All agreed, yes it will impair the intent and purpose.

(3) The immediate practical difficulty causing the need for the variance request was not created by any action of the applicant or predecessor.

5' Side Yard Setback Request: Jean answered that it actually was, because they want a larger home. All agreed.

Expansion Limitation over 50% Request: All agreed yes.

(4) The variance requested is the variance necessary to meet the purpose and intent of the chapter and to meet the other standards of review in this section.

5' Side Yard Setback Request: Jean Rowe, Bruce Nevins, and Dave answered yes.

Wendy Fitzgerald stated that she thinks the variance should only be granted if there is a unique circumstance to the property that results in a practical difficulty or undue hardship, and it doesn't seem like those exist. She added that she doesn't see how their request for a variance of 1,930 square feet to store a new boat and accommodate for a larger family demonstrates a practical difficulty.

Mike Glynn answered that the variance requested is not the variance necessary, it exceeds.

Expansion Limitation over 50% Request: Jean, Dave, and Bruce answered yes. Mike disagreed.

(5) Would a lesser relaxation than applied for give substantial relief to the owner of the property involved and be more consistent with justice to other property owners, and whether relief can be granted in such fashion that the spirit of the chapter will be observed and public safety and welfare secured.

5' Side Yard Setback Request: Jean asked Dave about his suggestion for a lesser relaxation, and he answered that he suggested moving the proposed addition into the required 7' setbacks.

Expansion Limitation over 50% Request: All agreed yes.

Discussion. Mike Glynn asked if granting the addition with a 7' setback would be acceptable to them; Zach Cunningham answered yes.

### **MOTION TO APPROVE VARIANCE REQUEST**

Mike Glynn motioned to grant construction to exceed the 50% maximum allowed by the Zoning Ordinance to the full 2,500 square feet as applied for, and to deny the 5' side yard setback and require the addition to comply with the 7' side yard setback in Waterfront District. Dave Grabemeyer seconded.

Roll call vote:

Yes (4): Mike Glynn, Jean Rowe, Bruce Nevins, Dave Grabemeyer

No (1): Wendy Fitzgerald.

Motion passed by roll call vote.

Dave Grabemeyer stated that the variance passed 4:1.

### **BOARD MEMBER CHANGE DISCUSSION**

Jean Rowe stated that Adele Straub resigned after the passing of her husband. She stated she would assume that Thom Brown would become the new member and Wendy would become the first alternate, but she would talk to Bill Saunders. She stated she would find out what the job duties of the Board Secretary entails.

Mike answered that as a board they elect their own executive officers and could do it at any time.

### **ADJOURNMENT**

Jean Rowe adjourned the hearing at 7:37 p.m.

Respectfully submitted,

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Lindsay Krohne, Recording Secretary  
Recording Secretary

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Dave Grabemeyer, Secretary

To be approved at the next Zoning Board of Appeals meeting