

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS MEETING – DECEMBER 8, 2020
VARIANCE REQUEST BY KURT CLEARY**

Chairman Thom Brown called the Zoning Board of Appeals meeting to order at 7:00 p.m. on Tuesday, December 8, 2020.

The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Thom Brown, Mike Glynn, David Grabemeyer, Bruce Nevins, Jean Rowe

MEMBERS ABSENT: None

OTHERS PRESENT: Building and Zoning Administrator Todd Herter, members of the public

APPROVAL OF NOVEMBER 10, 2020 MINUTES

Mike Glynn motioned to approve the November 10, 2020 Zoning Board of Appeals minutes.

David Grabemeyer seconded.

YES (5): Thom Brown, Mike Glynn, David Grabemeyer, Bruce Nevins, Jean Rowe

NO (0): None

Motion passed by roll call vote.

REASON FOR MEETING

Thom Brown recited the Notice of Public Hearing, explaining the reason for the public hearing: The request of Kurt Cleary, 31420 S. Lake Shore Dr. Dowagiac, MI 49047 (Parcel No. 14-130-280-062-00) for variances in order to permit him to construct a 32' x 30' home and attached garage on the parcel. The property is located in the "WD" Waterfront District Zoning Classification. The specific variances being requested are as follows: -a 4 foot variance from the required 30-foot front yard (lake side) setback in order to permit a 26-foot lake side setback for a portion of the proposed three-season room on the east corner; and -a 2 foot variance from the required 7-foot side yard setback on both the east and west sides, in order to permit construction up to 5 feet from the side lot (east and west) lines; and -a 12-foot variance from the required 20-foot rear yard (street side) setback in order to permit construction of the attached garage with an 8-foot setback from on the street side. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Zoning Ordinance.

BUILDING AND ZONING ADMINISTRATOR COMMENT

Todd Herter stated that regulations in Waterfront District state that any lot that is 80 feet or greater in depth has a 20-foot rear yard setback. He stated that a lot 40 feet or greater has a 7-foot side yard setback.

APPLICANT COMMENT

Kurt Cleary stated that with the street side setback the garage would be 17 feet from the road. He requested that the variances be granted so that the Clearys could build a house comparable to their neighbors. Kurt commented that the lake side setback would be 2 feet further from the lake than both of his neighbors. He commented that the requested house would be 960 square feet. Kurt stated that the Clearys planned on permanently living in the requested house. He stated that the garage would be beneficial for safety in the wintertime.

PUBLIC COMMENT

Charlie Olson commented that as a neighbor of the Clearys he would have no objection to the requested house and garage. He asked if the house would have 1 or 2 stories.

Kurt Cleary responded that the house would have 2 stories.

Chad Bouck, neighbor of the Clearys, stated he had no objections to the requested house and garage. Chad stated his concern about drainage for his property if the grade was raised for the nearby construction.

Kurt Cleary commented that there are two drain pipes leading out through the seawall on his property. Kurt stated that he would meet with the drain commissioner to make sure there would be no drainage problems.

Charlie Olson asked when the construction would begin on the Cleary property.

Kurt Cleary responded that construction would begin sometime after Labor Day of 2021.

ZONING BOARD OF APPEALS DISCUSSION

Todd Herter commented that he originally denied the request because it does not meet the requirements for the lot. He commented that the lot is 84 feet, not 80 feet. He restated that with 80 feet and greater the rear yard setback is 20 feet. Todd stated that the narrowest point of the lot is 42 feet 1 inch, and broadens out to 48 feet 5 inches. He stated that in the ordinance, any lot 40 feet or less has a side yard setback of 5 feet. Todd stated the side yard setback for the Clearys lot is 7 feet. He commented that the first floor living space could be on the second or ground floor. He stated that the minimum square footage is 850 square feet. He stated that the Clearys proposed 960 square feet, approximately 110 square feet larger than the minimum requirements.

Mike Glynn asked if the drawing of the house included the eaves.

Kurt Cleary responded that the drawing did not include the eaves. He stated he was under the impression that the eaves were not a part of the setback. He asked if they were to be included in the setback.

Todd Herter responded that the eaves were to be included in the setback requirements.

Kurt Cleary stated that the square footage would be wrong, and that they would have to bring the walls in to accommodate the eaves.

Todd Herter commented it would approximately be 30 by 30, which is 900 square feet.

Mike Glynn asked if the second story of the house would be above the garage.

Kurt Cleary responded that above the garage would be a storage area.

David Grabemeyer asked if the Clearys could get 850 square feet on the plot if the variance was denied. He stated that the house would have to be enlarged and moved closer to the road, and the garage would not be able to be built.

Kurt Cleary responded if they didn't get the variance they would just stay where they are at.

Mike Glynn asked if the 3-season room would have 8-foot side walls and a roof.

Kurt Cleary stated that the 3-season room would have windows and be on the ground level. He stated that the basement would have a walk out onto the main part of the deck. He stated that the first floor of the house would be above the main deck. Kurt stated that everyone in the area has two decks, one on the basement level and one on the main floor.

Thom Brown read the Five 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. (2) The variance will not impair the intent and purpose of this chapter. (3) The immediate practical difficulty causing the need for the variance request was not created by any action of the applicant or predecessor. (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) 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.

Thom Brown commented that the problem is that the builder wants to build a structure larger than what is allowed, rather than a practical difficulty. He stated that a smaller structure would be able to meet the setback requirements.

Mike Glynn commented that it seemed all the garages near the Clearys plot were on the other side of the road, rather than the same side of the road as the houses. He stated that the structure's design would be too big for the property.

David Grabemeyer motioned to support the ordinance and deny the request.

Mike Glynn seconded.

YES (5): Thom Brown, Mike Glynn, David Grabemeyer, Bruce Nevins, Jean Rowe

NO (0): None

Motion passed by roll call vote.

Variance denied.

PUBLIC COMMENT

Kurt Cleary stated that if the proposed structure were built, the neighbors to the left and right would still be closer to the lake than the Clearys. Kurt stated it would not be fair to follow requirements that his neighbors were not required to follow. He stated that they would like to have equity with the neighbors.

Charlie Olson commented that he agreed with Kurt Cleary. Charlie stated that he would still have no objections to the Clearys building the house and garage.

Kurt Cleary asked when the setback requirements were written.

Todd Herter stated that the current ordinance was adopted in 2004. He commented that many properties have garages right up to the road because the old ordinance did not have a rear yard setback.

Charlie Olson commented that there is a house around the curve on Maple Island Road that is a 3-story house with an elevator, its garage built close to the road, and its side 20 feet or less from the lake. He stated that the house was built within the last 5 years. Charlie asked how the house could have been built in accordance to the current ordinance.

Todd Herter responded that the house had been built 15 years ago. He stated it was one of the first houses built after the new zoning ordinance went into effect.

Thom Brown commented that the Clearys had the opportunity to appeal the decision.

ADJOURNMENT

Thom Brown adjourned the meeting at 7:53 p.m.

DRAFT