

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS HEARING HELD ON JULY 18, 2018**

The hearing was called to order by Chairman Jerry Donley at 7:05 p.m. on Wednesday, July 18, 2018. The Pledge of Allegiance to the Flag of the United States of America was led by Bruce Nevins.

MEMBERS PRESENT: Bruce Nevins, Jean Rowe, Jerry Donley, Mike Glynn, Adele Straub

OTHERS PRESENT: Building/Zoning Administrator Todd Herter, Supervisor Bill Saunders, Recording Secretary Lindsay Krohne, several members from the public.

ABSENT: None

APPROVAL OF MINUTES

Mike Glynn motioned to approve the June 6, 2018 Zoning Board of Appeals minutes. Jean Rowe seconded. Motion passed by voice vote.

PUBLIC HEARING

Jerry Donley read the Notice of Public Hearing, which explained the variance request:

The request of Daniel Nowaczyk, 50582 Maple Island Road, Dowagiac, MI for a 126foot variance from the required 30-foot front yard (lake side) setback and a 3% variance from the 30% maximum permitted lot coverage in order to permit the attachment of the existing house and garage and a 12ø x 17.83ø addition to the southwest corner of the structure and an addition of 4.33ø x 24ø to the northeast part of the existing residence. The variances, if granted as requested will allow a portion of southwest structural addition to be located 18 feet from Magician Lake and a 33% lot coverage. The property is located in the WD Waterfront District Zoning Classification. Setback provisions and the lot coverage limitation are contained in Section 155.079.D. of the Township Zoning Ordinance. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Township Zoning Ordinance.

BUILDING/ZONING ADMINISTRATOR COMMENT

Building/Zoning Administrator Todd Herter stated that the proposed structure would require the front yard setback to be 18ø rather than 30ø which is 3ø shy of being half the distance. Todd added that the maximum lot coverage is 30%, and the addition would add 3% to the maximum lot coverage. Todd stated that he is to enforce the Zoning Ordinance as written, and it is his opinion to uphold the Zoning Ordinance.

PUBLIC COMMENT

Dan Nowaczyk, owner of the residence at 50582 Maple Island Road provided handouts to the Zoning Board of Appeals members, which Jerry Donley stated should be marked Exhibit A.

Dan Nowaczyk stated that he has been here for approximately 40 years and has a wife and five children. He stated that they bought the 3-bedroom house about a year ago and are already running out of room, so they are asking for a variance to expand the house. Dan stated that they wanted something with frontage so they could build this type of house, and they knew at the time that they would need a variance. Dan referred to the provided floor plan sketch showing what they would like to build, and added that they are working with an architect. Dan stated that they had a soil boring test done to see if the land is suitable to build that close to the water, and the results came back showing that it is buildable with a wider footing. Dan referred to the Google Map image of the area, showing the neighbor's setbacks. Dan stated that they are getting closer to the water, but the same of the house would be a U-shape, which would be more symmetrical and also give privacy to both themselves and their neighbors to the south. Dan stated that the lot is small and they are trying to do the best with what they've got. He added that their neighbors have allowed them to use their property for overflow parking. Dan explained that him and his wife would like to retire there in the next 5-7 years. Dan stated that their builder of choice is M4 Construction. He referred to the survey and stated that it would give them a better idea of what the house would look like on the property, adding that they wanted to bump the South end of the house out and be closer to the lake to make it more uniform.

Mike Braman stated that he lives south of the Nowaczyk's and that he and his wife support the project, adding that they are a good family.

There were no speakers in opposition of the variance.

Public Comment was closed at 7:18 p.m.

COMMUNICATIONS

There were no written comments received.

COMMISSION MEMBER DISCUSSION

Mike Glynn stated that he made a visit to the property, and questioned if the covered walkway between the smaller and larger garage was going to be closed in as part of the construction. Dan Nowaczyk answered yes.

Mike referred to the deck that is currently there, and stated that part of the area where they want to encroach on the front yard setback looks like a rock garden now. Mike asked if the deck that continues north is over 10 inches high and stated that if it is, it is already encroaching. Todd Herter stated that he did not go out there and measure anything. Mike then questioned how old the house is, and added that it must have come before the board at one time because it is really tight and only 4' to the road when 8' is required.

Todd Herter answered that if he is not mistaken, the house was built prior to the new Zoning Ordinance when there was really no rear yard setback. Todd added that the previous inspector allowed up to 3' and explained that the front yard setback was done by averaging the distance

between the normal high water mark or the water's edge to the furthest most protruding portion of each structure within 300 feet in each direction.

Todd stated that the deck is a step up onto the deck, which would more than likely be over ten inches.

Mike stated that when he saw it, he thought it was already non-compliant to the ordinance now. He then asked if the addition on Lot 19 is a two story addition with an upper section balcony, and Dan Nowaczyk answered yes, but that the upper balcony is up for debate and his first budget cut.

Mike questioned if the upper balcony would affect the setback requirement if it's a balcony, and asked if there is a footing.

Todd answered that if it is above 18 inches and it is in the setback, then yes. Mike stated that if there is a balcony, they are looking at more of a variance than they had thought. Todd stated that the balcony would be a part of it, as it would be projecting into the front yard setback.

Mike stated that if the balcony is part of the project, they are asking for a much larger variance. Dan stated that he never really picked up on that when he was planning the project. He stated that he would be willing to give that up and apologized for the oversight.

Mike stated that the proposed addition in the front, 4.25x24 feet is going to just make it into the 8 foot rear yard setback now, so that wouldn't actually be a part of the variance request other than the additional 3% lot coverage. Mike asked Todd if he figured the lot coverage separately for the addition, and Todd answered that the lot is irregular, and he went by what the architect came up with.

Jean Rowe stated that she did not have any questions, and Bruce Nevins stated that his questions were already answered. Adele Straub stated that she was trying to digest the situation and had no questions.

Jerry Donley asked if the proposed 12x17.83 foot addition would line up with the other side of the house, and Dan answered that it would bring the house in line, making it symmetrical.

Mike asked if the covered walkway was part of the lot coverage, and Todd answered that he told the architect that everything that's under a roof counts in the lot coverage. Mike added that it is open on both ends with a roof covering it. He asked if the garage with the two doors is a living space, and Dan answered no, and that the smaller garage is for storing things like the lawn mower.

Mike referred to Dan's previous comment about overflow parking, and asked him where they park now.

To the south there are two spots, to the north there's a pin that's in our neighbor's driveway, her driveway encroaches, there's one spot there, and overflow we park across the road.

Chairman Jerry Donley read the Five Standards of Review:

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.
- (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.

Bruce Nevins asked if there was any written comment. Jerry Donley stated there was none received.

Mike Glynn referred to the Standards of Review Section A. He stated that he doesn't know what the practical difficulty is. He stated that it doesn't lie within the lot, and the lot is flat and straight forward. He stated that the house used up about as much lot coverage as what the Zoning Ordinance allows, and the variance request would exceed the allowable lot coverage. Mike stated that the practical difficulty is that the house the applicant wants is larger than what the lot can handle according to the Zoning Ordinance. He stated that the lot is too small for the house the owner wants to have, which is not truly a practical difficulty.

MOTION TO APPROVE VARIANCE REQUEST

Bruce Nevins motioned to approve the variance request. Adele Straub seconded.

Mike Glynn stated that he wanted to stress that the front portion of the house, by the lake, is a substantial encroachment on the setback requirement. Mike added that he thinks they are setting a bad example to not stick with the Zoning Ordinance because in his mind, the practical difficulty has not been established.

Roll call vote:

Yes (3): Bruce Nevins, Jerry Donley, Adele Straub

No (2): Jean Rowe, Mike Glynn

Absent (0): None

Motion passed by roll call vote. Chairman Jerry Donley declared the variance request approved.

Chairman Jerry Donley stated that the applicant would receive a copy of the application before leaving.

ADJOURNMENT

Chairman Jerry Donley adjourned for a five minute recess at 7:38 p.m.

Respectfully submitted,

Lindsay Krohne
Recording Secretary

Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting