

**MINUTES
SILVER CREEK TOWNSHIP BOARD OF APPEALS
OCTOBER 18, 2017**

The hearing was called to order by Acting Chairperson Bruce Nevins at 7:00 p.m. on Wednesday, October 18, 2017. The Pledge of Allegiance to the Flag of United States of America was recited.

MEMBERS PRESENT: Bruce Nevins, Adele Straub, Jean Rowe and Trustee Mike Glynn.

OTHERS PRESENT: Attorney John Magyar, Zoning/Building Administrator Todd Herter, Supervisor Bill Saunders and Clerk Barbara Runyon acting as Recording Secretary.

ABSENT: Jerry Donley.

PUBLIC HEARING

Acting Chairperson Bruce Nevins read the Notice of Public Hearing as follows: "Take Notice that the Silver Creek Township Zoning Board of Appeals will hold a Public Hearing on Wednesday, October 18, 2017 at 7 p.m. at the Silver Creek Township Hall, 32764 Dixon Street, Dowagiac, MI 49047 to consider the variance request made by Chris Praklet the property owner. The applicant requests a variance of section 155.083(D) (1) of the Ordinance. This variance is for front yard and side yard setbacks. The applicant is requesting 40' front yard setback and the ordinance requires 75'. The ordinance requires a 30' setback of the side yard and the applicant is requesting 10'. This property is located at 50557 M-152, Dowagiac, MI 49047, Tax ID Number: 14-130-175-022-01. All those wishing to be heard are encouraged to attend the public hearing, but written comments will be accepted by mail," dated September 21, 2017."

Acting Chairman Nevins asked for Zoning/Building Inspector Todd Herter's to give his reasons for the denial.

ZONING/BUILDING INSPECTORS COMMENTS

Inspector Herter reported that the building is too large to meet the setback requirements. Mr. Praklet is requesting a 40 foot front yard setback and the ordinance requirement is 75 feet, and a 10 foot setback on the side lot line and the ordinance requirement is 30 feet.

PUBLIC COMMENT

Acting Chairperson Bruce Nevins opened the floor for public comment, giving the applicant, Chris Praklet an opportunity to speak.

Applicant Chris Praklet gave his address as 95051 Wildwood Drive. Mr. Praklet stated that he's worked hard establishing his business, and would like to make this a full-time business rather than seasonal. He has a ginormous barge, which is the reason he's asking for the setback on the side. He would like to be able to pull it in and park it without obstructing highway traffic. He needs it closer to the road due to the size of the building.

Acting Chair Nevins asked if anyone else wanted to speak in favor of application.

Larry Doorn responded that he would like to speak but not necessarily in favor or against. Chairperson Nevins said he would give him an opportunity later.

With no one else asking to speak, Acting Chair Nevins asked for comments from anyone against it. He made note that to his knowledge, no letter or paperwork has been received.

Mark Williams, owner of Williams Building, asked to speak in favor of the application. He has been contracted to build the building. He met Mr. Praklet about three months ago and has heard good things about him, and that he is a hard working-man. He believes that the building will be an asset to the community, attractive, with a nice design.

Acting Chairperson Nevins advised that he would normally close the floor for public comment, but told Mr. Doorn he could comment at this time.

Larry Doorn introduced himself and said that his daughter lives adjacent to this proposed building. He said that his comments have nothing to do with Mr. Praklet, it's a general concern. He questioned the procedures, with Chairman Nevins addressing those questions. Mr. Doorn asked why the township has ordinances.

Attorney Magyar answered that it is not a guessing game for this board, that the board hears public comment and makes decisions.

Mr. Doorn questioned since we have ordinances, why do we have variances.

Chairman Nevins explained that it's in the statute. Every time someone comes in, circumstances are unique as to what they are asking. Sometimes it's turned down, other times not. The commission analyzes, they go out and look at it, listen to neighbors comments, and review letters.

Mr. Doorn went on to question why we have ordinances. He asked how it affects Mr. Praklet and if there is a charge or an assessment.

Attorney Magyar responded that a fee is set for a variance. Applicant's pay, and in order to have it granted, they have to meet the standards that are outlined in the ordinance and meet state statute. The statute provides for variances.

Mr. Doorn asked further questions on variances with Mr. Magyar responding.

Acting Chair Nevins closed the floor to public comment at 7:15 p.m.

BOARD DISCUSSION

Acting Chairman Nevins asked the Board for their feelings on this request.

Trustee Glynn questioned whether the front yard setback measurement is from the edge of the road or the center of the road.

Administrator Herter responded that typically where the road right-of-way generally starts and ends at the property line.

Trustee Glynn noted that the property is 150 feet deep and 150 in length, about 22,000 feet. Stating our ordinance requires a minimum of one acre for commercial district, which is about half of the property. He noted that with the old building being torn down, we have to apply the standards for setback. He stated that is a problem for him.

Acting Chair Nevins commented that it depends on the locale of the community and what has transitioned already. He noted most properties either direction averaged 45 feet. The fence is 45 feet from the center road. He questioned Todd Herter what the right-away is on M-152.

Administrator Herter believes it is 66 feet, so 33 feet from center, noting that they're not always put where they are supposed to be.

Chairman Nevins asked Adele Straub for her comments.

Adele said that she was confused, that they usually have an outline of the proposed building marked with flags. She saw nothing that showed where the building would be, only survey stakes, and was confused on where the setbacks were being measured from.

Chairman Nevins questioned Mr. Praklet if he was given flags, and he responded that he did not receive flags and did not know about it.

Mr. Praklet said he provided drawings and surveys of the proposed location. He would like to be 40 feet for the front stake and 10 feet in from the side on the stake.

Jean Rowe also had difficulty visualizing without flags. She noted that there are some huge buildings next door and wondered if they were conforming. Attorney Magyar advised that they are nonconforming.

Attorney Magyar questioned Mr. Praklet as to the reason he's asking for the large variance in the front when he has additional area in rear yard.

Mr. Praklet responded that he wants to be able to store his lifts from the public's view so it doesn't look like stuff in the corner.

Attorney Magyar questioned the 10 foot side yard variance, wondering how much space was on the other side of building.

Mr. Praklet responded 92 feet, to be able to pull into the lot from the roadway with their gigantic barge and back into the building. It also gives room for parking. The barge is 45 feet long.

Acting Chairperson Nevins would like a stipulation that nothing would be stored on the side 10 feet.

Mr. Praklet agreed. He asked if they could put a fence line in with black skirting so that it would shielded, and what the setback is. Administrator Herter responded it could be on the property line but not over.

Trustee Glynn stated that he believes 10 feet was too close, stating commercial properties generally have more activity and this one in particular has a single-family home just north of it. Noting the way it is being set will shield them, but the relief that is being granted goes with the property, and it doesn't mean it will be that way forever.

Trustee Glynn said that it is a big variance to grant as presented and is struggling with the over one acre. Discussion was held.

Jean Rowe asked Mr. Praklet if he was aware of the zoning restrictions when he purchased the property.

Mr. Praklet responded that he was not aware of the one acre, but understood that there would be stipulations on where to place the building.

Adele Straub asked the applicant if the 10 feet requested were modified, would he have something to modify it to.

Trustee Glynn responded that he is asking for a 20 foot variance on the side yard. Further Board discussion was held.

Jean Rowe questioned Mr. Praklet if a lesser variance would be helpful to him.

Mr. Praklet responded if a lesser variance on the side was granted, he would be okay with that. The main thing would be the front yard variance but the side would be helpful.

There was no further discussion of the Board and Chairperson Nevins moved into the Standard of Review. Jean Rowe read the Standards of Review as follows:

“The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.” Jean agrees that it will not be detrimental because there are big buildings in the area already. Chairperson Nevins agrees. Trustee Glynn said that it’s largely surrounded large warehouses and commercial buildings. The detriment may be to the residential property to the north which is zoned commercial and is designated as a legal nonconforming use.

Jean read (2) as follows:

“The variance will not impair the intent and purpose of this chapter.” Jean said it actually will, won’t it?

Number (3):

“The immediate practical difficulty causing the need for the variance request was not created by any action of the application or predecessor.”

Attorney Magyar asked Administrator Herter for clarification, why he did not address the half acre rather than an acre, wondering if it was because it was an existing nonconforming lot.

Administrator Herter responded that it was zoned commercial, and if it’s zoned commercial and the township puts regulations on a piece of property and it was lotted off prior to the zoning ordinance, it’s still a commercial lot.

Number 3 was re-read. Jean Rowe agreed with number 3. Trustee Glynn said that to him it means if he had a conforming lot and split and sold half of it and then came in and asked for a variance and built a building on the other half, he created the situation. In Praklet’s case no, it was not the situation. He bought the property without the knowledge of what was possible to do with it. Adele Straub agrees.

Number 4: “The variance request is the variance necessary to meet the purpose and intent of the chapter and to meet the other standards of review in this section.” Counsel was asked for clarification. Attorney Magyar said that normally 4 and 5 are read together. He said that what we’re looking at is it a reasonable use of this property in a commercial area or would a lesser relaxation than applied for give substantial relief to the property owner and be more consistent with justice to other property owners. Courts have asked in some cases whether a lesser standard was considered.

Jean Rowe read 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.” Jean Rowe asked if we are allowed to state how much lesser relaxation we will allow. Trustee Glynn thought if that would work for the applicant, the side yard seems awfully close. He noted that he’s limiting activity and a fence will help, but

again that this variance is forever. Trustee Glynn asked Mr. Pracklet if he could live with a greater side yard setback.

Mr. Pracklet said he would be okay with the greater side yard setback if allowed.

Trustee Glynn said it would be a lesser variance. He said that Mr. Pracklet is asking for a 20 foot side yard variance, what could he live with? Could you live with a 20 foot setback?

Mr. Pracklet responded that he could live with a 20 foot setback.

Trustee Glynn questioned the Board on what they would suggest doing with the stipulation for use for that strip.

Nevins said there's nothing there. Just to widen it and have nothing there, you're not accomplishing anything. Trustee Glynn responded that there would be a fence there.

Discussion was held as to the fence and its grade. Nevins noted that the fence wouldn't accomplish anything. Pracklet suggested grading out the property line so that his lot is the same height all the way up to the lot line.

The Board noted that the water runoff would have to be controlled. Pracklet responded that it would be controlled by vegetation and gravel.

Acting Chairman Nevins asked if anyone wanted to give a proposal to the Board; a motion for change in application?

Adele asked Mr. Pracklet, "Your building would remain the same size, it's a matter where you would be placing it?" Mr. Pracklet responded, "yes."

Trustee Glynn commented that 40 feet in front of the building, would still line up with the building to the south, it would be close and not protrude; would fit together and could work. He thought 75 feet is excessive. Trustee Glynn stated that the one half acres is his biggest issue for the size of the building. He would also be more comfortable if Mr. Pracklet would agree to a 20 foot side yard setback.

Acting Chair Nevins did not agree, stating they could compromise but the little distance wouldn't make a difference. Further discussion was held.

Acting Chair Nevins questioned the Board if they had a problem with the 40 feet front yard setback. No one objected to the 40 feet.

Trustee Glynn questioned whether the application needed to be modified to address the one-half acre since it had not been asked for.

Attorney Magyar responded that Administrator Herter stated his reasons, and suggested that the Board say that we're aware of the lot size when voting.

Trustee Glynn questioned if everyone was in agreement to a 15 feet side yard setback, and no member objected.

Motion

Adele Straub moved to grant the variance with a modification to approve the side yard setback at 15 feet and the front yard setback at 40 feet.

Trustee Glynn amended the motion to include that the Zoning Board of Appeals has considered the one acre minimum requirement for construction in a commercial district, and is still willing to grant the variance.

Acting Chairperson Nevins asked to include a stipulation to not allow storage on the north side of the building.

Jean Rowe asked to second Adele's motion with the stipulations.

Adele Straub restated the motion to grant the variance to Mr. Praklet with a 15 feet side yard setback and 40 feet front yard setback, taking into consideration the one acre minimum, with the stipulation that no storage will be on the north side of the property.

Mr. Doorn questioned the privacy fence on the north side.

Discussion was held as to the fence. Adele Straub requested Recording Secretary Runyon read back the motion.

Recording Secretary Runyon read the motion: Adele Straub moved that the variance be granted with the modification of a 15 feet side yard setback and a 40 feet front yard setback, with the consideration of the one acre minimum requirement for construction in commercial district with no objection, with the stipulation that there will be no storage on the north side of the building, and there will be a privacy fence on the north side.

Chairperson Nevins asked Administrator Herter if the side yard height fence on commercial the same as residential, six feet. Administrator Herter said that there were no specifics in commercial fences, but that there is a separate ordinance on fences and he enforces all the same.

Trustee Glynn questioned whether we had a second. Jean Rowe responded that she had seconded and will second again.

Acting Chair Nevins requested Secretary Adele Straub call for a roll call vote.

Yes (3): Jean Rowe, Bruce Nevins and Adele Straub

No (1): Mike Glynn

Absent (1): Jerry Donley

Motion carried by roll call vote.

Meeting adjourned at 8:10 p.m.

Acting Recording Secretary Barbara Runyon

Dated: October 24, 2017