

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS MEETING HELD ON AUGUST 21, 2019**

VARIANCE REQUEST BY CROSS EXCAVATING/MIKE & MARY DEVENEY

Chair Jean Rowe called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Wednesday, August 21, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Dave Grabemeyer, Bruce Nevins, Jean Rowe, Adele Straub, alternate Thom Brown

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

ABSENT: Mike Glynn

MOTION TO EXCUSE MIKE GLYNN FROM PUBLIC HEARING

Jean Rowe motioned to excuse Mike Glynn from the public hearing due to a conflict of interest. Dave Grabemeyer seconded. Motion passed by voice vote.

APPROVAL OF JULY 17, 2019 MINUTES

Adele Straub motioned to approve the July 17, 2019 Zoning Board of Appeals minutes. Dave Grabemeyer seconded. Motion passed by voice vote.

EXPLANATION/REASON FOR MEETING

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

- The request of Cross Excavating and Mike and Mary Deveney, respecting the property at 32417 Wildwood Drive, Dowagiac, MI (Parcel No. 14-130-228-011-00) for several variances in order to permit them to slightly enlarge, relocate and replace a house that was damaged by a fallen tree. The property is located in the WD Waterfront Residential District Zoning Classification. The applicants are proposing to construct a 33 'x 35' two story house with a total square footage of 1,792 and a 32 'x 15' covered porch on the lake side of the property. The variances being requested are as follows:
 - a) A 5.1' variance from the required 20- foot rear yard (street side) setback requirements in order to permit the northeast corner of the house to be located approximately 15' from the road right-of-way; and
 - b) A 6.3' variance from the required 20 -foot rear yard (street side) setback in order to permit the construction of a 4' x 8' covered porch on the road side approximately 14' from the street; and
 - c) A 1.25' variance from the required 7' side yard setback in order to permit construction of the south east side of the house's second story overhang approximately 5 feet from the south property line; and

- d) A 9.96' variance from the required 30' front yard (lake side) setback in order to permit construction of the proposed covered porch approximately 20' from the lake; and
- e) A 1.7' variance from the required 30' front yard (lake side) setback in order to permit the proposed covered lake side porch to be located approximately 28 feet from the lake at its northwest corner.

The setback standards for lake front properties in the WD District are contained in Section 155.079(D) of the Silver Creek Township Zoning Ordinance. 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

Adele Straub read aloud Todd's letter, dated July 22, 2019, explaining that the Deveney's are requesting a variance to allow them to build a larger home and to violate the set-back requirements to varying degrees on the rear yard, one side yard, and the front yard. Todd's letter referred to the submitted documentation by the applicant for the proposed set-back violations. Todd's letter also explained that the original home was damaged by a large tree falling on it, and they would like to increase the size of the home to accommodate family gatherings and place the new home on the property to accommodate the existing well.

PUBLIC COMMENT

Chair Jean Rowe opened public comment at 7:07 p.m.

Contractor Russ Cross of Cross Excavating stated that they are trying to stay the same distance from the lake as they are now. He added that they are trying to center the house into the lot. Mr. Cross stated that it is hard to do with the high water mark because you don't end up with much property.

Bruce Nevins commented that the flags were lying on their side and not stuck in the ground when he visited the site. Jean Rowe and Thom Brown commented that they were in the ground when they visited.

Russ Cross added that they are proposing to replace the home due to the fallen tree.

Property Owner Mike Deveney stated that he greatly appreciates the efforts everyone has made to conform and maintain the conditions of the lake. Mr. Deveney stated that to the best of his knowledge, every effort was made to try to stay in the same footprints. Mr. Deveney stated that conditions and rules have changed, understandably. He also stated that to his knowledge, they would not be encroaching any further than where they are already located. Mr. Deveney asked for consideration, and stated they are trying to stay with the concept of the lake.

Chair Jean Rowe stated that no written comments were received.

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

ZONING BOARD OF APPEALS DISCUSSION

Dave Grabemeyer commented that his understanding is that they are proposing a larger home to accommodate their family. Dave stated that the only problem he sees with it, is how many people they have had come in front of Zoning Board of Appeals wanting a larger home for family, boats, etc. and it doesn't seem like a reason it should be bigger, when some property owners have to conform to the rules and some don't.

Thom Brown asked for clarification that they do not want to cover the existing well. He stated that they could rotate the house and take the well out of the picture, but they would still exceed the required setbacks in the front yard and back yard. He asked if there is any reason they wouldn't just relocate the house and punch in a new well.

Mr. Cross stated that the high water mark comes way into the yard leaving only about 15 feet. He added that with the high water mark, you could hardly put a shed there.

Thom stated that he thinks it would be too long, with the house being 35' long with a 15' porch. He added that the lot is probably 92' on the short side, so it would still be 10' too long.

Dave Grabemeyer asked if they can change the variance from what the applicant is asking for, and Bruce Nevins answered yes.

Todd Herter stated that the Zoning Board of Appeals has the authority to grant a lesser variance if they choose. He asked the board to keep in mind that the home is not a stick built home, it is a manufactured home. He explained that when you are dealing with manufactured homes, you're dealing with dimensions of the home that are produced in the factory. He stated that you don't get to choose the dimensions of the home, only what's inside of it.

Bruce Nevins stated that it is a small lot, but with the high water mark and the front deck being too close, he doesn't see a reason why the next one can't accomplish that same amount. He stated that they aren't looking for overkill; they are looking to put their home on the existing lot. Bruce stated that he sees no problem with it.

Jean Rowe stated that the home is quite close to the water but she assumes that is not a factor they need to discuss.

Adele Straub stated that most lakes and Cable Lake especially, are very high. Adele questioned if they are considering the larger size house or trying to remain on the footprint of what was there. Adele asked if the footprint includes the porch, and Todd Herter answered yes.

Adele stated that she saw the flags marking the proposed house. She asked if you can tell the high water mark now.

Todd Herter explained that the high water mark is controlled by FEMA, and each lake has a different flood plain level. Todd added that Cable Lake has no inlet or outlet, so it has the highest variation.

Bruce Nevins referred to Dave Grabemeyer's statement that everyone wants to build bigger, and stated that the home was smashed by a tree, and they've seen the size of the lot. He stated that the applicant wanting to replace the home on the lot is a little different than demolishing a good home to rebuild a larger one.

Dave Grabemeyer asked how much bigger the proposed house is compared to the original and how much farther out the house would be. Brandy Mayer of Cross Excavating stated that they are just adding a bedroom and a bathroom, going up a level.

Mr. Deveney stated he doesn't believe the proposed home extends out any further, only up in order to get an extra bedroom. He added that they have made every effort to try to conform to the requirements.

Dave Grabemeyer asked if the original home was out of compliance, and Mr. Deveney answered no, but the rules changed. He stated that his understanding is the rules changed after the house was there.

Bruce stated that the front yard is kind of obvious, it is close and the rules have definitely changed.

Mr. Deveney stated that the square footage of the proposed home is smaller, at 894 square feet whereas the original cottage is around 1,100.

Adele 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.

All agreed yes.

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

Jean, Dave and Thom agreed yes. Adele questioned how it would impair the intent and purpose. Jean Rowe answered that if they grant the variance, it would not be in accordance with the measurements as set forth in the zoning book. Adele stated that she thinks that is a question of interpretation.

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

Jean, Dave, Thom, and Bruce 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. Bruce answered that he doesn't know how to answer that question since it is a demolition issue. No other comments were made.

(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 stated that she is not sure if a lesser relaxation would be useful to the property owner. Jean asked Todd for input.

Todd stated that the house that is there is 1,100 square feet, base floor. He stated that the proposed house is 896 square feet, which is smaller than the original home.

MOTION TO APPROVE VARIANCE REQUEST

Adele Straub motioned to grant the variance as requested. Bruce seconded.

Roll call vote:

Yes (2): Bruce Nevins, Adele Straub

No (3): Dave Grabemeyer, Thom Brown, Jean Rowe

Motion denied by roll call vote.

ADJOURNMENT

Jean Rowe adjourned the meeting at 7:32 p.m.

Respectfully submitted,

Lindsay Krohne
Recording Secretary
To be approved at the next Zoning Board of Appeals meeting

Adele Straub, Secretary