

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS HEARING HELD ON MARCH 14, 2019**

**VARIANCE REQUEST BY MICHAEL BEHM**

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Thursday, March 14, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Bruce Nevins, Jean Rowe, Mike Glynn, Dave Grabemeyer, Adele Straub

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

ABSENT: None

**APPROVAL OF FEBRUARY 21, 2019 MINUTES**

Jean Rowe motioned to approve the February 21, 2019 Zoning Board of Appeals minutes. Mike Glynn seconded. Motion passed by voice vote.

**PUBLIC HEARING**

Chairman Bruce Nevins read the Notice of Public Hearing, which explained the variance request:

- The request of Michael W. Behm, 4629 Linscott Avenue, Downers Grove, IL respecting the property that he owns in Silver Creek Township at 500000 E. Lake Shore Drive, Dowagiac, MI (Parcel No. 14-130-305-001-00) in the WD Waterfront Residential District Zoning Classification. The applicant is requesting a 12-foot variance from the required 20-foot rear yard setback (street side) contained in Section 155.079 of the Zoning Ordinance in order to permit the construction of a 31' x 28' detached garage 8-feet from the rear property line. 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 referred to Section 155.079 Water Front District, (D) District Regulations. Todd stated that any lot that is 80' or greater in depth requires a 20' rear yard setback. Todd explained that this would only allow Mr. Behm a 28'x19' garage. Todd added that the requested 12' variance would give the applicant an 8' rear yard setback, which would be the minimum requirement if his lot were less than 80' in depth. Todd stated that because of the curvature of the road and the county road right away, he believes it does meet practical difficulty based on the fact that he is not the one who built the house there so far back and the counties turn around doesn't help matters.

Bruce Nevins asked if the garage would be attached, and Todd answered yes. Jean Rowe stated that the address on the Public Notice was incorrect.

### **PUBLIC COMMENT**

Michael Behm stated that the correct address is 50002 E. Lakeshore Drive. Michael stated the original garage is small, and less than 8' from the property line. He added that he is proposing an attached garage to get the maximum distance from the street. Michael stated that the house is the first house in Cass County, next to Gilmore's, and the old turnaround going into the rear yard setback makes it almost impossible to add on to the garage.

Bruce Nevins closed the public comment at 7:12 p.m.

### **COMMUNICATIONS**

None.

### **COMMISSION MEMBER DISCUSSION**

Dave Grabemeyer asked Mr. Behm if he would be taking the old garage down, and he answered yes. Dave Grabemeyer stated that the new garage would be closer to the house, and farther from the road. He also questioned the wood stakes with pink flags, in which Mr. Behm explained he had a survey done to find out exactly how far the house and garage are from the property line. He also explained that the stakes nearest the garage, the second stake specifically, is where the curve starts, and the other stake is right next to the neighbor's driveway.

Mr. Behm stated that the current garage is a similar distance from the road as the neighbor's, and the new garage would be farther back. Dave Grabemeyer stated that it looks like it would fit right in.

Jean Rowe stated that she was concerned with the old building, but Todd explained that it would be taken down.

Bruce Nevins had no questions or comments.

Adele Straub questioned a shed that appeared to be collapsed. Mr. Behm answered that it blew down a week ago and would be removed.

Adele also questioned a chunk of concrete square adjacent to the walkway. Mr. Behm stated he wasn't sure and hadn't noticed yet.

Mike Glynn stated that the new garage would be non-conforming, but it would be more conforming than it is right now. Mike added that they did not create this problem, but they are stuck living with it. He explained that it all hinges on practical difficulty, and he doesn't know how property lines can create practical difficulty. Mike stated that practical difficulty is a character of the property, not property lines.

Dave Grabemeyer stated that he sympathizes with the applicant.

Michael Behm stated that it would be setting back 8' from the furthest most roundest part of the property, and the new building may add another 5-6' for the setback he has right now. Mike Glynn stated that it would definitely be more compliant than it is now. Mr. Behm added that they didn't know they had the property line of the turnaround, and the county doesn't plow or maintain it, it has basically become a part of his property.

Jean asked where the garage doors would be. Mr. Behm answered that a 16ft door would be facing street, and there would be a small 5' door on the back.

Mike Glynn referred to the drawing, showing a 28'x31' garage, and stated that if the 31' were reduced to 28', only a 5' variance would be needed, which would be 3' less. Mr. Behm stated that he was proposing 31' to accommodate his boat.

Dave Grabemeyer questioned if the 3' would really make a difference. Mike Glynn answered that he is talking about practical difficulty. Mike stated that the building is an odd ball dimension in order to fit the boat. He added that the members can vote however they want to, but the Planning Commission created the Zoning Ordinance to include the granting of a non-use variance, stating that the Zoning Board of Appeals is allowed to grant a variance only in cases where there is reasonable evidence of practical difficulty in the official record of hearing and all the conditions are met. Mike Glynn added that if they believe property lines create practical difficulty, than that's their opinion and vote.

Mr. Behm stated that the setback is to the overhang, which means the building is actually 30' rather than 31'.

Jean Rowe read the Standards of Review for a Non-Use Variance:

**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 members agreed it would not be detrimental.

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

Jean Rowe stated that she always has difficulty with this. Mike Glynn stated that the intent of the chapter is the Water Front District setback is 80' or less, and the property is over 80', so the setback is 20'. Members agreed.

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

Jean Rowe stated that it's obvious because of the way the property is curved. Members agreed, other than Mike Glynn, who answered that he doesn't think the shape of the property line has anything to do with practical difficulty. Mike added that it is the character of the property, for

example a bank on the side of the property where you couldn't build a garage because of a cliff, so you'd need to move it toward the house two feet.

(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.

Members agreed yes. Mike Glynn stated that as long as they are treating this as an 80' lot where only 8' is required, then yes it's met the intent.

(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.

Members agreed yes. Bruce stated that he doesn't think it makes a world of difference. Mike Glynn stated that the addition of the garage being proposed would look right in line, and a less relaxation would make no difference. Dave Grabemeyer stated that it would fit right in. Mike Glynn added that it is not relevant to this particular request.

Adele questioned the north property line, and Mike Glynn stated that it looks like there is shared activity along the property line. Mr. Behm answered that the neighbor's drive is right there, and the shrubs are on his property.

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

Jean Rowe motioned to approve the variance request. Dave Grabemeyer seconded.

Motion passed by roll call vote:

Yes (5): Dave Grabemeyer, Mike Glynn, Jean Rowe, Bruce Nevins, Adele Straub

No (0): None

Absent (0):

Chairman Bruce Nevins stated that the variance has been approved.

Mike Glynn instructed Mr. Behm that he could see Todd Herter for his permit, and Jean Rowe stated that he would be given a copy of the paperwork.

### **ADJOURNMENT**

Bruce Nevins adjourned the meeting at 7:45 p.m.

Respectfully submitted,

---

Lindsay Krohne

Recording Secretary

To be approved at the next Zoning Board of Appeals meeting

---

Adele Straub, Secretary