

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS HEARING HELD ON FEBRUARY 21, 2019**

**VARIANCE REQUEST BY MIKE & MAUREEN KELLY**

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Thursday, February 21, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

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

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

ABSENT: Dave Grabemeyer

**APPROVAL OF NOVEMBER 8, 2018 MINUTES**

Jean Rowe motioned to approve the November 8, 2018 Zoning Board of Appeals minutes. Mike Glynn seconded. Motion passed by voice vote.

**APPROVAL OF FEBRUARY 21, 2019 AGENDA**

Mike Glynn motioned to approve the February 21, 2019 Zoning Board of Appeals agenda with the addition of a discussion of two items: holding two meetings in one night and an organizational meeting. Adele Straub 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 Mike and Maureen Kelly, 9354 S. Hamline Avenue, Evergreen Park, IL respecting the property that they own in Silver Creek Township at 32138 Huckleberry Lane Dowagiac, MI (Parcel No. 14-130-210-001-01) in the WD Waterfront Residential District Zoning Classification. The applicants are requesting variances in order to permit them to construct a 8' x 12' shed for the storage of lawn and garden equipment garage on the south side of the double-frontage lot between the house and Huckleberry Lane. The double-frontage lot requires a 30-foot setback from the lake and from the street according to Section 155.023 of the zoning ordinance. The zoning ordinance also requires a 10-foot separation between the house and the shed. 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 stated that the applicant wants to build an 8'x12' shed on the south side of their home, on the Huckleberry Lane side. Todd referred to the packet provided by the applicant, showing that the property is unique in how it is shaped. He stated that the property basically makes a pie shape.

Todd Herter stated that the ordinance requires a lot with double frontage to have the same set back as the front, whereas a normal lot has a 7 foot side yard setback. Todd added that he believes the lot poses a practical difficulty in how it's formed and where the house is, and his opinion is that a variance should be granted.

## **PUBLIC COMMENT**

Applicant Mike Kelly stated that he and his wife have been coming to Dewey Lake for years. He stated that they were fortunate to find a piece of property on Dewey Lake that they could afford. Mike stated that the issue they ran into is the way the property is divided prevents them from doing almost anything without violating some form of the regulation. Mike added that they want to comply with regulations, but it's virtually impossible with the layout of the property, which is why they are asking for the variance. Mike stated that they need somewhere to store their lawn mower, tools, gas, etc.

There were no other speakers in favor or opposition of the variance.

## **COMMUNICATIONS**

None.

## **COMMISSION MEMBER DISCUSSION**

Jean Rowe stated that she could not access the property due to the chain across the driveway and the snow and berm with leaves, and that she viewed the proposed shed from the road. She thanked the applicants for the flag placement. Jean also commented that the building would really fill the little space that is there.

Adele Straub stated that she went to the property twice and couldn't understand where the shed was going to be adjacent to the house. Adele asked if there would be 10' between the shed and the house. Todd Herter answered that 10' is required, and part of the variance request is to have less than 10'. Adele stated that it is a very odd situation because of the shape.

Mike Glynn asked Mike Kelly to show him on the drawing where the building would be at, because he had been there twice and the flags were in a different spot. Mike Kelly showed the members on Mike Glynn's drawing.

Mike Glynn stated that the shed would be between the house and road, not in the back of the house.

Mike Glynn asked if the house is in the 30' setback, and Todd answered yes. Discussion followed. Mike questioned what the 20' rear yard setback referenced. Todd answered that it references the dotted line, because the surveyor thought the side yard setback was 20', and that's why the dotted line is there. Mike asked if the ordinance says it's a front yard setback because it's a corner, and added that the house actually sits another 10' into the setback. Todd answered yes, and that the house itself sits in the setback.

Mike Glynn stated that it is his opinion the only way to make it happen without a variance would be in front of the house. He added that he understands why it wouldn't be as nice and why they would like to utilize the side yard. Mike stated that they have no neighbors, and the setback is to give the neighbors some relief. Mike stated that it wouldn't hinder anyone.

Mike Glynn asked what kind of structure the shed would be as well as if it would have a foundation. Mike Kelly answered that it would be a combination of wood and fake wood/composite. Mike Kelly answered that the shed would be placed on fairly level ground on 12x12" concrete pads. Mike Glynn stated that it could be moved.

Mike Glynn asked if the drawing was an accurate representation of where the shed would be, and Mike Kelly answered yes. Mike Glynn asked how much distance is between the house and shed, and Mike Kelly answered 8'. Discussion followed.

Mike Glynn asked if it would serve them better to move the shed closer to the lake to give them room to drive a vehicle between the house and shed. He stated that it is irrelevant to him, but questioned if it would work better for them if they ever needed to get a vehicle through the yard. He added that if they were to move it a little closer to the lake, they would have 10' of space. Mike Kelly answered that he didn't want it to be an eyesore, and that it would not be visible where they are proposing it.

Jean stated that she remembers years ago, it came up that there had to be so many feet between the building and house in case of a fire. Mike commented that now you can attach them.

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 it is an odd thing to discuss.

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

Mike Glynn stated that the applicant did not create this odd lot, they purchased it that way. All members agreed.

(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.

Mike Glynn stated that the ordinance was created because they wanted corner lots to be consistent with other houses along the line and not stick out further than the others. He added that it does not apply to this case because there are no other houses to compare to.

(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 considers 8'x10' to be pretty small. All members agreed.

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

Jean Rowe motioned to approve the variance as stated without any adjustments. Adele seconded.

Bruce Nevins stated that he didn't understand the motion.

Mike Glynn stated that Todd's remarks say that in order for the yard barn to be in the side yard, it would need a variance of 22', giving them an 8' side yard setback. He stated that he thinks that should be incorporated in the motion.

Mike Glynn stated that he would like to amend the motion to approve the variance for the shed to be located in the side yard with a variance of 22', giving them an 8' side yard setback, and to maintain an 8' distance between the house and shed, giving a 2% variance between the house and shed.

Jean Rowe withdrew her previous motion.

Adele seconded the motion made by Mike Glynn.

Mike Glynn stated the reason he is comfortable with granting the variance is that it is portable and movable, and if it was permanent construction, he'd be more reluctant.

Motion passed by roll call vote:

Yes (4): Jean Rowe, Bruce Nevins, Mike Glynn, Adele Straub

No (0): None

Absent (1): Dave Grabemeyer.

Chairman Bruce Nevins stated that the variance has been approved.

**COMMISSION MEMBER DISCUSSION**

Chairman Bruce Nevins brought up for discussion two meetings in one night when there are two requests back to back. Todd Herter stated that he would rather have two meetings in one night.

Jean Rowe asked if they could be forewarned of one that may be difficult.

Todd Herter stated that one of the next Zoning Board of Appeals hearings is similar to tonight's, except it's for a garage and not a shed, and the other one is for a house trailer that the owner wants to fix up beyond its natural life.

Mike Glynn stated that he likes to have one meeting, so they don't rush. Todd Herter agreed.

Discussion followed that Tuesdays are not a good day for the meetings due to schedule conflicts.

Mike Glynn stated that for the ZBA, the ordinance book is their precedent, and Bruce stated that they don't have to follow it. Mike stated that he disagreed, and practical difficulty is key. Discussion followed. It was decided that the two requests received will be scheduled for different dates.

Jean Rowe suggested rotating the Chair position every year. Mike Glynn stated that they can have an organizational meeting and select officers.

Mike Glynn referred to the Planning and Enabling act, and stated that a report from the Zoning Board of Appeals should be given to the Planning Commission yearly, to show the Planning Commission what the problems are.

The members agreed tentatively on Thursday, March 21, 2019 at 7:00 p.m. for an organizational meeting.

**ADJOURNMENT**

Bruce Nevins adjourned the meeting at 8:07 p.m.

Respectfully submitted,

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

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Adele Straub, Secretary