

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS HEARING HELD ON JULY 24, 2018**

**VARIANCE REQUEST BY JANET BARKELL**

Chairman Jerry Donley called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Tuesday, July 24, 2018. The Pledge of Allegiance to the Flag of the United States of America was led by Mike Glynn.

MEMBERS PRESENT: Bruce Nevins, Thom Brown, Jerry Donley, Mike Glynn, Adele Straub

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

ABSENT: None

**APPROVAL OF JULY 18, 2018 ZONING BOARD OF APPEALS MINUTES**

Mike Glynn motioned to approve both Zoning Board of Appeals Public Hearing minutes from July 18, 2018. Bruce Nevins seconded. Motion passed by voice vote.

**PUBLIC HEARING**

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

The request of Janet Barkell 50231 W. Lakeshore Drive Dowagiac, MI for a 217 square foot variance from the 850 square-foot minimum first floor requirement in order to permit construction of a 633 first floor square-foot tiny house on the property addressed as 50231 W. Lakeshore Drive within the Township. The property is located in the WD Waterfront District Zoning Classification. The minimum first floor square footage requirement is 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 applicant is requesting a 217 square foot variance to build a 633 foot tiny home, when 850 square foot is required by the Zoning Ordinance. Todd stated that he feels the Zoning Ordinance should be upheld.

**PUBLIC COMMENT**

Applicant Janet Barkell provided ZBA members a packet relating to her request. Janet stated that she is requesting a variance to build a home smaller than the required 850 square foot in the Lakeview subdivision. Janet stated that she currently lives with her mother, Bonnie Barkell, and wishes to build a small home to meet her needs and allow her and her mother to keep their independence. Bonnie added that the property is maintained well and they garden together and keep the area very nice. Janet stated that the benefit of a smaller home means the heating and

cooling takes less energy, and added that she has lived in a home smaller than 850 square foot and does not need or want that much space.

Jean Williams stated that she is in favor of the request and hopes it will be approved. Jean stated that it would be an asset to the neighborhood and that she has known the Barkellø for a long time.

Barb Miznicki stated that she is a neighbor of the Barkellø and is in favor of the request. She added that it would be a beautiful little home and it is a good idea to live separately.

Mary Cleveland stated that she agrees with everything that has been said, and hopes it is approved.

Bonnie Barkell stated that she would like to have this little home built and thinks it would look extremely nice

There were no comments in opposition.

Janet Barkell stated that one neighbor had a concern about what the tiny home would look like, and thought it was on wheels, which was not true. She stated that it would just be a smaller home.

Jerry Donley closed the public comment at 7:23 p.m.

### **COMMUNICATIONS**

There were no written comments received.

### **COMMISSION MEMBER DISCUSSION**

Thom Brown stated that the proposed home is 74% of the required size, about 26% under. He stated he believes thatø a fairly large margin.

Mike Glynn asked Janet if the primary home was across the street, and Janet answered yes. Mike asked if the house and garage were built at the same time, and Janet answered that the garage was built later. Mike questioned if there was a deed restriction put on the back lot before the garage could be built, and stated that the township requires that before you can build a garage, the lots have to be contiguous and have a deed restriction that shows the lots cannot be separated. Janet stated that she did not know, and explained that the lots are being combined into three taxable IDø across the road, which is where the home would be built. Janet stated that the main house would have its own taxable ID and the three lots across the street would be combined.

Mike Glynn asked Todd Herter if this is considered a back lot or if it is a standalone lot, separate from the primary residence on the lake side. Todd answered that with the three lots added together, it would be a standalone lot, and the house across the street would be a standalone lot.

Mike asked if there was a deed restriction for the garage to be built prior to the requirement. Mike asked when the garage was built, and Bonnie answered that it was built in 1988.

Todd Herter stated that under the old ordinance, the minimum square foot for a lot as 12,000. He added that now, if there are two lots that don't meet the minimum square foot requirement, but they are owned by the same person and contiguous, they are considered one lot for zoning purposes. Todd explained that wasn't the case back then, and he wasn't sure what the previous zoning person did. He stated that as long as the property was owned by the same person who owned the property across the street, and it was contiguous with that, then they could have the garage there.

Mike Glynn asked if there was a requirement for them to have the primary residence first before the accessory building, and Todd answered yes, that in the old ordinance, you still had to have a primary residence before an accessory building.

Mike Glynn stated that he was confused because the two lots aren't connected together, and asked if there is a deed restriction that says they are together. Todd answered that he did not know, and as long as the property lines were continuous with one another, it was okay.

Todd stated that when he did the calculations, the three lots would meet the minimum square foot of 6,000 and the lake lot and the lot with garage would meet the minimum of 6,000 as well.

Mike asked for clarification that this wouldn't be possible to do today with the back lots being connected to the primary house, but at that time it was ok. Todd answered yes.

Mike stated that the minimum width on a dwelling unit is 23 feet, and the minimum square foot for a first floor dwelling is 850. Mike asked if there was going to be a basement, and Janet answered no, that it would be built on a slab.

Mike stated that it would not be long and narrow because it was not very big, and it was much smaller than the requirement. Mike stated that he doesn't see what the difficulty is in just making it 850 square foot, only an additional 217 square foot.

Janet stated that she prefers something smaller and more economical and energy efficient. Mike stated that the difficulty is that she wants a smaller house. Janet stated that she has lived in a 675 square foot house for years, and is accustomed to living small and prefers it. Janet added that she sees no reason for something larger than what her lifestyle requires.

Adele Straub stated that she saw where the little house would be built and sees no problem with any setbacks. Adele stated that the drawing of the home seems nice, and the proposed home would be in the midst of nice vegetation. Adele questioned the property beyond the fence on the back side, and Janet answered that it was just woods.

Jerry Donley stated that he likes the proposed home and understands the request. He stated that many retirement age people are going back to smaller homes. Jerry stated that mobile homes have different requirements. He stated that they are looking at the request for her home only and thanked her for her presentation.

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.

**MOTION TO APPROVE VARIANCE REQUEST**

Adele Straub motioned to approve the variance request for a 633 square foot home. Jerry Donley seconded.

Mike Glynn stated that he wanted to reiterate that granting a non-use variance should only be allowed by the Zoning Board of Appeals in cases where there is reasonable evidence of practical difficulty, per the Zoning Ordinance. He stated that as good as the presentation was, there is no reasonable evidence of practical difficulty. Mike stated that practical difficulty runs with the property, or the lot. Mike stated that the lot is quite large and there are no setback issues, as Adele already pointed out. Mike stated that his opinion is that the variance should not be granted, and they should uphold the ordinance.

Roll call vote:

Yes (2): Jerry Donley, Adele Straub

No (3): Bruce Nevins, Thom Brown, Mike Glynn

Absent (0): None

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

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

**ADJOURNMENT**

Adele Straub motioned to adjourn the Public Hearing. Mike Glynn stated that he wished to continue the meeting to address some issues with the Zoning Board of Appeals members, and welcomed the public to stay if they wished.

A lengthy discussion followed regarding using the Five Standards of Review to decide if a variance should be granted or denied. Mike Glynn referred to the variance request on July 18, 2018 and stated that he did not understand they're thinking when voting to approve the request. He stated that the lot was too small, and the house was already too big.

Mike stated that there are seven guys on the Planning Commission who spent many hours on the Zoning Ordinance for a reason, and the Five Standards should be followed, specifically "practical difficulty". Mike questioned the board if they don't agree with the Five Standards of Review, do they want to change them?

A member from the public, Joe Moore, stated that he thinks someone should be able to ask questions during public comment without being classified as "in favor" or "in opposition" and Jerry Donley answered that it could be put into the agenda for the future.

Jerry Donley stated he thinks 850 square foot requirement on the first level should be addressed.

Jerry Donley questioned if they should deny someone their modest needs.

Thom Brown stated that the Planning Commission spent a lot of time to come up with the ordinances.

Jerry Donley stated that in tonight's case, the house may have been 633 square foot right now, but in a few years, maybe it might be 1,250 square foot, or 2,200 square foot. Jerry asked what happened to land rights.

Mike answered that if you want land rights, get rid of the Zoning Ordinance. If you want some control, you have to have the Zoning Ordinance in place. He stated that land rights sound great until your next door neighbor wants to set up a business.

Bruce stated that they need to fix their standards of review. Mike stated that if they are going to have Standards of Review, they need to follow them. Lengthy discussion followed with multiple conversations.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Lindsay Krohne  
Recording Secretary

Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting