

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS MEETING HELD ON AUGUST 29, 2019**

**VARIANCE REQUEST BY JOHN & KAREN HOESE**

Chair Jean Rowe called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Thursday, August 29, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

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

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

ABSENT: None.

**MOTION TO EXCUSE BRUCE NEVINS FROM PUBLIC HEARING**

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

**APPROVAL OF AUGUST 21, 2019 MINUTES**

Jean Rowe motioned to approve the August 21, 2019 Zoning Board of Appeals minutes. Adele Straub seconded. Motion passed by voice vote; Mike Glynn abstained as he was absent from the hearing.

**EXPLANATION/REASON FOR MEETING**

Secretary Adele Straub read the Notice of Public Hearing, explaining the reason for the public hearing:

- The request of Jeffrey, John & Karen Hoese, respecting the property at 51252 Garret Road, Dowagiac, MI (Parcel No. 14-130-210-024-01) for a 8'9" variance from the required 30' front yard (lake side and road side) setback in order to permit them to retain a newly-constructed 12' wide deck spanning the street-side length of the existing house, formerly the Shady Shores office. The property is located in the WD Waterfront Residential District Zoning Classification. 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**

Building/Zoning Administrator Todd Herter stated that he was doing a framing inspection at a neighboring home when he noticed the deck was built and he hadn't issued a building or zoning permit, so he red tagged the deck. Todd stated that he spoke with Mr. Hoese and his wife, explaining the setback requirements and regulations for Waterfront District. Todd stated his opinion to uphold the ordinance, seeing no practical difficulty.

## **PUBLIC COMMENT**

Chair Jean Rowe opened public comment at 7:08 p.m.

Applicant Jeffrey Hoese apologized for not getting the permits. Mr. Hoese stated that he looked at the permit form and noticed that most spaces were not applicable, and didn't see a space for a deck. He stated that he called Todd Herter and asked for a checklist and regulations, and was directed to view them through the website. Mr. Hoese stated that he looked online and did not find anything, so he went through with building the deck.

Mr. Hoese stated that he purchased the home after speaking with Bruce Nevins after Shady Shores ceased to operate two years ago. He explained that his father has mobility issues, so they built the deck going straight out of the house without steps, for ease of use for his father.

Mr. Hoese stated that he wasn't trying to break any rules or circumvent the system, and nowhere on the permit did it say he needed to have a zoning compliance permit either. Mr. Hoese stated that he built the deck very strong to hold a lot of weight, for both snow and his large family.

Mr. Hoese referred to the pictures he sent with his application to see what the home looked like before and after the deck. He explained that the deck is 12' from the front door and it is not an extremely large deck.

Phillip Nevins spoke stating that he has known the Hoese family since the 1970's, and has never had a problem with them.

Secretary Adele Straub read the letters of communication received:

Shirley Kickert-Wedemeier's letter requested the deck improvement be allowed. Her letter in favor of the deck stated that the deck would allow the family additional space outside to enjoy and entertain, it would be appealing to the eye, and the improvement would increase area property values. Her letter stated there would be no negative impact on the neighborhood.

Philip and Lynette Nevins' letter in favor of the deck explained that the property was previously owned by their family as part of Shady Shores. Their letter stated that the Hoese family has cleaned up the property and the deck has added to the attractiveness of the property and the surrounding area.

Jean closed public comment at 7:15 p.m.

## ZONING BOARD OF APPEALS DISCUSSION

Mike Glynn stated that Zoning isn't about how nice something looks, it sets forth guidelines for the district that it's in. He stated that the front yard setback in Waterfront District is 30' from the edge of the road. He stated that if he's not mistaken, they can build a structure in that front yard setback as long as it doesn't go over 18" tall, so they could reconstruct the deck and be totally in compliance. He questioned Jeff Hoese if the cement steps were removed.

Jeff Hoese stated that they tried to remove the steps, but ended up laying 2x4's flat over the existing concrete steps. He added that the steps would be out of compliance as well.

Mike Glynn referred to the picture with the net placed to mark where 30' from the property line is, and stated that the original steps may actually be into the setback. Jeff Hoese answered that they are about 3" over the requirement. He added that his property line goes from 13' to just under 11' from the road.

Adele Straub stated that she visited the site and the deck looks nice.

Jean Rowe asked for clarification that the applicant is asking both a permit to build a deck, as well as a variance to build a larger deck than what is permitted under the ordinance. Todd Herter answered that the applicant did not get a building permit or a zoning compliance permit. Jean asked if the applicant discussed the deck with him prior to building, and Todd answered that it is possible they did but he speaks to dozens of people each week and can't remember them all. He added that it is always better to come into his office to discuss the plans and ask any questions.

Thom Brown stated that it is a good looking deck, and saw other properties that looked similar, adding that the other decks were at 30'. He stated that there is a garage a couple lots down that is way closer to the road than his deck. Jeff Hoese answered that the house next to them has a deck that is 29' from the road.

Dave Grabemeyer asked for clarification on finding the ordinance online and whether it was on the website. Jeff answered that he could not find anything.

Todd Herter stated that the building permit application has decks listed on it. Discussion followed and it was found that the applicant may have come across an older version of the application.

Dave questioned if the deck was lowered to 18", they could still be able to have a railing on it. Todd answered that a railing would not be required unless the structure were 30", but when you add something to the structure such as a handrail or bench making it taller than 30' it automatically raises the height of the structure to over 18", requiring it to be in compliance.

Jeff Hoese asked if the railing would be involuntary. Todd answered that it would be involuntary unless he went through the process to ask for a variance.

Dave Grabemeyer stated that these requests put them in a compromising position and they don't want to set precedence.

Mike Glynn stated that the ordinance is very clear regarding decks. He referred to Section 155.079 WD Waterfront District (D) (4) on page 114 of the Zoning Ordinance: An open, unenclosed, and uncovered porch, or deck, exceeding more than 18 inches off the ground, may not project into a required yard setback. A balcony or window awning shall not project into any required yard setback.

Jeff Hoese questioned where to find that, and Mike Glynn answered that it is under Waterfront District in the Zoning Ordinance, which can be found online on the Township's website. Mike Glynn stated that construction, his understanding of what Jeff was referring to earlier, is not covered in the zoning ordinance.

Adele Straub referred to a garage two doors over from the Hoese property, and questioned how far out it is and whether it is his backyard. Jeff answered that neighbor owns the gray house in front of him as well as a small parcel of land across the street.

Mike Glynn stated that as our zoning ordinance has developed, there are many non-compliant structures. He stated their hope is that as development continues, structures will come into compliance, and they would always like to see them more in compliance, not less.

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.  
All agreed yes.

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

(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 commented that the variance was requested because of #3. All agreed.

(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.

Discussion followed about the applicant being able to lower the deck to 18”.

Adele Straub asked if there is a possibility of a lesser relaxation, and Dave answered that you could but it would be ridiculous.

### **MOTION TO DENY VARIANCE REQUEST**

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

Roll call vote:

Yes (4): Dave Grabemeyer, Thom Brown, Mike Glynn, Jean Rowe

No (1): Adele Straub

Motion passed by roll call vote.

### **ADJOURNMENT**

Mike Glynn motioned to adjourn the hearing. Dave Grabemeyer seconded. The public hearing was adjourned at 7:36 p.m.

Respectfully submitted,

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Lindsay Krohne  
Recording Secretary

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Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting