

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS HEARING HELD ON NOVEMBER 8, 2018**

**VARIANCE REQUEST BY JAMIE BEECHY/ROBERT KUPSIK**

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Thursday, November 8, 2018. The Pledge of Allegiance to the Flag of the United States of America was previously recited.

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

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

ABSENT: None

**PUBLIC HEARING**

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

The request of Jamie Beechy and Robert Kupsik of 13957 Linder Ave, Crestwood, IL respecting the property that they own in Silver Creek Township at 50767 West Bay Rd, Dowagiac, MI (Parcel No. 14-130-260-004-00) in the WD Waterfront Residential District Zoning Classification. The applicants propose to add a 20'x23' attached garage to the rear (road) side of the existing house. The applicants request two variances as follows:

- A 2% variance from the maximum 30% lot coverage limitation contained in Section 155.079(D)(1) of the Zoning Ordinance; and
- A 2' to 4' variance from the required 8-foot minimum rear yard setback on the street side of the property in order to place the proposed new garage at an angle conforming to that of the house from 5' to 3' of grass between the property line and the road. The property is approximately 70 feet in depth.

**BUILDING/ZONING ADMINISTRATOR COMMENT**

Building/Zoning Administrator Todd Herter referred to the Zoning Ordinance in Waterfront District. Todd explained that any lot 80ft in depth or greater requires a 20' rear yard setback, and any lot less than that requires an 8' rear yard setback. Todd stated that the property owner would need a 2' variance on one corner to comply, and a 4' variance on the other corner.

Todd Herter stated that he looked at the plans, and it is his opinion that a 20'x23' garage is not unreasonable. Todd added that if they were willing to shrink the garage down to 20'x20' they would not need a variance on one corner, but would still need one on the other, approximately 1'. He added that he is not sure if the applicant would be willing to go with a shorter garage, but it would help in both the rear yard setback requirements and in the lot coverage requirements.

Todd Herter stated that in his letter to the Zoning Board of Appeals members, he stated his opinion to uphold the Zoning Ordinance, and that he would like to retract that. Todd stated that it is his opinion to grant a variance if the applicant is willing to shorten the garage to 20ø to only need a variance on one corner.

### **PUBLIC COMMENT**

Applicant Robert Kupsik stated that he and Jamie Beechy recently purchased the property. He stated that he respects Mr. Herter's opinion about shortening the garage to only require a variance on one corner. Mr. Kupsik stated that a smaller garage would be more difficult for them to store boats, snowmobiles and vehicles in, and they are looking for as much square footage as possible and 23ø would make it more feasible. Mr. Kupsik stated that he believes his neighbor's garage comes out the same length from the street.

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

### **COMMUNICATIONS**

None. Chairman Bruce Nevins closed Public Comment.

### **COMMISSION MEMBER DISCUSSION**

Jean Rowe asked Building Inspector Todd Herter for clarification, that the proposed garage he suggested was 20ø6ø x 20ø rather than 20ø6ø x 23ø and would still need a rear yard setback variance. Todd answered yes, and stated that one corner would need a variance for approximately 1ø6ø as long as everything is exact as far as the measurements. Todd added that in the old Zoning Ordinance, the rear yard setback for any lot was 3ø. Mike Glynn stated that the old ordinance explains the neighbor's garage setback,

Adele Straub stated that she went out twice to look at the site. She added that it is a very peculiar lot and the house sits oddly, which she understands because hers is the same way. She referred to shortening the depth of the garage, to only need the 1ø6ø variance. She stated that she doesn't have any other comments.

Mike Glynn referred to the 8ø rear yard setback from the property line. He stated the property has had a survey and has the rear yard property line, whereas a lot of times it is calculated from the center of the road. Mike added that the old Ordinance explains the next door neighbor's garage, and another one further to the east, which also has the 3ø setback. Mike Glynn stated that he agrees with Todd Herter that shortening the garage to 20ø would certainly meet the intent of what we're trying to do with our Zoning Ordinance. He stated that they would only be granting the 1ø6ø variance, which he believes is a fair compromise.

Nick Barnes stated that he can certainly sympathize with the want and desire to have more garage space, and finding a compromise is why they're all there. Nick asked for clarification about voting on the requested variance and if they decided to consider granting a lesser variance, whether they would have to vote "no" and then have the applicant come back to request a lesser variance. Mike Glynn answered that they would not have to return, but if the applicant agreed to

accept a lesser variance, the wording of their motion would reflect the variance they were granting.

Jean Rowe commented on the placement of the flags, that it was easy to find as well as the numbers on the mailbox. Mike Glynn commented that the placement of the flags showed exactly where the applicant was proposing the building.

Mike Glynn questioned Mr. Kupsik about building up for more space. Mr. Kupsik stated that they could not due to the construction not being the typical 2x4, but 2x6 tongue and groove.

Mike Glynn stated that he felt it was appropriate to ask the applicant if they were willing to accept a 20ø depth garage.

Bruce stated that they were there to consider the request that came to them. He stated that he welcomes a motion on what Mr. Kupsik has presented, and if it is rejected, they can make another motion and vote twice. Bruce asked for clarification.

Mike Glynn stated that he believes they need to decide exactly what they are going to vote on, and once they vote, it is a done deal. Mike added that if it is acceptable to the applicant, they can make a motion to allow as 20ø deep garage rather than a 23ø garage. Discussion followed.

Building Inspector Todd Herter stated that to be fair, another option would be to make the garage 20ø6ö by 20ø6ö, which would be right at the limit on one corner, and would only require a 2ø variance on one corner and gain more space for the applicant. Discussion followed.

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

Mike Glynn motioned to approve a lesser variance than requested, to allow a 20ø6ö by 20ø6ö garage, and grant a 2ø variance on the North West corner of the garage. Jean Rowe seconded.

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.

All members agreed öyesö.

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

All members agreed öyesö that the immediate practical difficulty causing the need for the variance request was created by the owner wanting a larger garage.

(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.

Jean Rowe answered yes. Bruce Nevins stated that he can see both sides. Adele Straub answered that it is tricky, but agrees öyesö. Mike Glynn and Nick Barnes answered öyesö.

(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.

All members agreed öyesö.

Motion passed by roll call vote:

Yes (5): Jean Rowe, Bruce Nevins, Adele Straub, Mike Glynn, Nick Barnes

No (0): None

Absent (0): None

Chairman Bruce Nevins declared the variance request approved.

### **ADJOURNMENT**

Bruce Nevins adjourned the meeting at 7:38 p.m.

Respectfully submitted,

Lindsay Krohne  
Recording Secretary

Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting