

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS HEARING HELD ON OCTOBER 11, 2018**

VARIANCE REQUEST BY JAMES AND DENISE VANHULLE

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Thursday, October 11, 2018. The Pledge of Allegiance to the Flag of the United States of America was recited.

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

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

ABSENT: None

APPROVAL OF SEPTEMBER 20, 2018 ZONING BOARD OF APPEALS MINUTES

Jean Rowe motioned to approve the Zoning Board of Appeals Public Hearing minutes from September 20, 2018 with the correction of "Mike explained that it took *the Planning Commission members* hours to come up with the 1500 square foot maximum" rather than "Mike explained that it took *them* hours to come up with the 1500 square foot maximum." Adele Straub seconded. Motion passed by voice vote.

PUBLIC HEARING

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

The request of James and Denise VanHulle and the David E. Squiers Family Trust, 55792 Indian Lake Road for a 2-foot variance from the minimum 7ø side yard setback contained at Section 155.079(D)(1) of the Township Zoning Ordinance and a 40% variance from the permitted 30% lot coverage contained in Section 155.079(D)(1) of the Zoning Ordinance in order to permit the construction of a new home and attached garage, the footprint of which is proposed to be 2261 square feet and is proposed to cover 70% of the parcel and is proposed to be located 5 feet from the side yard property lines on portions of the north and south sides of the parcel. The side yard setback variance is needed on the east side (street side) of the parcel only because the parcel is 44 feet in width at the lake side, but only 40 feet in width tapering toward the road side (east). The property is located in the WD Waterfront Residential District Zoning Classification. 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 lot coverage percentage calculation was incorrect, and instead of 70% lot coverage, it was more like 36%.

Todd Herter referred to Section 155.079 Water Front District, (D) (1) of the Zoning Ordinance.

Todd Herter explained that the lot is 44ø wide at the lake, and the building point where the home is going to be is wide enough to where the regulations state that a 7ø side yard setback is required. Todd stated that the lot tapers going toward the back, down to just less than 40ø. He added that in the same section, a lot that is 40ø or less has a side yard setback of 5ø. Todd stated that the building line is where the setbacks are taken from, which means the lot has to have a 7ø setback all the way back. Todd added that with the size garage they are proposing, it would only allow them to have a 5ø setback rather than 7ø and by making the garage a little narrower/shorter, he believes it could still fit in the 7ø setback. Todd stated that his opinion is to uphold the Zoning Ordinance.

PUBLIC COMMENT

Applicant James VanHulle stated that the property has been leased by his wife's family for the last 70 years. He added that they are looking to retire at the lake and would like to accommodate their three children and their significant others for weekend visits. He added that they could cut back the size of the garage a little bit, but they are downsizing from where they are at now and would like to have space in the garage for a work bench.

He added that Ms. Blackmond, the actual property owner/landlord has written a letter approving the project.

Mike VanHulle stated that he is James VanHulle's brother, and has built two cottages to the south of James, and put a year round home there. He stated that his understanding is if the lot was only 40ø wide the whole length, only a 5ø setback on both sides would be required, but since the lot is 44ø 7ø setback is required. He stated that since he has a larger lot and a funny shape, he needs the approval and is almost being penalized for the extra 4ø in the front.

There were no other public comments.

COMMUNICATIONS

A written letter dated September 2, 2018 from the David E. Squiers Family Trust, Mumaugh Indian Lakes LLC, landlord of the property, was received giving permission to seek the variance on the leased land.

Bruce Nevins closed public comment at 7:15 p.m.

COMMISSION MEMBER DISCUSSION

Mike Glynn stated that in the calculation of the total percentage of coverage, the concrete structure wasn't included, which is almost 200 square feet. Mike added that including that structure brings the total up to 2,113 square feet, which is 42% lot coverage.

Nick Barnes stated that he agrees with Mike's comment and it is important to note the concrete building that is there.

Adele Straub questioned if the iron fence was on the boundary line, and Mr. VanHulle answered that it was south of the boundary line by about 6 inches. Adele questioned if the little shed was theirs, and he answered that it was, and the two wooden sheds belonged to the neighbors.

Jean Rowe thanked whoever put up the Silver Creek flags, and stated that she assumed the fence was the boundary line.

Mr. VanHulle stated that the fence was temporary for the dogs.

Jean Rowe asked if they were planning to tear down the house and the little out buildings. Mr. VanHulle stated that they were going to tear the sheds and building down, and the concrete structure/boathouse would be staying.

Mike Glynn commented on the design of the proposed home, asking if the side door would be a main entrance. Mr. VanHulle answered that it would be a side entrance and the main entrance would be through the garage. He added that some plans show a porch, which would not be a part of their plans. Mike questioned if the elevation of the side entrance door would require steps and commented that any permanent structure over 18" can't encroach in the setback. Mike added that if you have two steps, you're in violation. Mike asked Todd Herter for clarification.

Todd Herter stated that there is an 18" maximum without affecting side yard setbacks. Todd added that typically a step is 8", so you could have two 8" steps and then step another 8" into the house.

Mike stated that with an A/C unit or generator, he didn't believe they would be able to have it on the side of the house due to being in the setback, and Todd Herter clarified that A/C units and generators are not affected. Discussion followed.

Mike Glynn referred to the 42% lot coverage, and stated that their goal is to maintain and preserve the quality of our lakes. He questioned where the runoff would go if everyone started having 42% lot coverage. Mike commented that one way to address the lot coverage is to consider a 24 or 26' home and a 24x24' garage, which would help with the lot coverage situation. He added that he doesn't believe the setbacks are as big of an obstacle as the lot coverage.

Bruce Nevins stated that the 30% lot coverage has more to do with preserving our lakes, and with this property, it's all going away from the lake. He stated that he has no problem with the 42%.

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.
- (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.

Discussion on the Standards of Review followed:

#1: All agreed that it would not be significantly detrimental to adjacent property and the surrounding neighborhood. Jean Rowe commented that the houses are squashed together, and Bruce Nevins commented that the neighborhood is unique. Mike Glynn commented that although there is no immediate detriment, it could be detrimental in the future with additional requests for more lot coverage. Mike Glynn questioned when they should start enforcing the Zoning Ordinance, and Bruce answered when they get out of that neighborhood.

#2: Jean stated that it certainly does impair the purpose and intent of the chapter, and Bruce agreed. Adele stated that going back to #1, they cannot predict what variances will come in the future and thought everything they review is based specifically on those particular cases, and no precedent would be set. Adele stated that she does not know that it won't impair the purpose and intent of the chapter, and that maybe it does right now but cannot say that it will forever. Mike Glynn stated that it will diminish the significance of our Ordinance requirements for setbacks and lot coverage. Nick Barnes agreed that it will.

#3: All members agreed that it was caused by the variance request.

#4: Jean, Bruce, Adele, and Nick answered yes. Mike stated no, that the variance requested is in excess of the allowed.

#5: All members agreed yes. Mike Glynn stated that if the home and garage were made slightly smaller, they would comply with the setbacks. He added that it would still exceed lot coverage, but a lesser relaxation would give substantial relief to the owners. Mike added that the home would be a little smaller than what they were asking for, but would still be a huge improvement over what is there now, and they would have their garage.

MOTION TO DENY VARIANCE REQUEST

Jean Rowe motioned to deny the variance request. Nick Barnes seconded.

Mike Glynn stated that he would ask the applicant if he could offer a modified dimension on the home and garage they could consider to get closer to their standards.

James VanHulle stated that the manufactured homes come in a set width, and the smallest is 27'0" x 10'0", which would give them another foot and an inch on each side. He added that a 24'0" x 24'0" garage would take care of all the setback problems, and they could live with that.

Attorney Catherine Kaufman stated that no setback variance would be needed, but they would still need a variance for lot coverage. Mike Glynn stated they would be much closer to the requirement, probably closer to 36%. Mike stated that the home they are proposing would be 27ø10ø rather than 30ø and the garage would be 24øx24ø

Jean withdrew her motion, and Nick seconded.

MOTION TO APPROVE VARIANCE REQUEST

Mike Glynn motioned to grant a variance for a 27ø10ø wide and 40ø long home with a 24øx24ø attached garage, and a lot coverage percentage in excess of the 30% allowed by our ordinance for this plan. Nick Barnes seconded.

Roll call vote:

Yes (3): Jean Rowe, Mike Glynn, Nick Barnes

No (2): Bruce Nevins, Adele Straub

Absent (0): None

Variance approved by roll call vote. Chairman Bruce Nevins declared the variance request approved.

ADJOURNMENT

Bruce Nevins adjourned the meeting at 7:46 p.m.

Respectfully submitted,

Lindsay Krohne
Recording Secretary

Adele Straub, Secretary

To be approved at the next Zoning Board of Appeals meeting