

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS HEARING HELD ON JANUARY 6, 2016**

The meeting was called to order by Acting Chairperson Richard Morey at 7:00 p.m. on Wednesday, January 6, 2016. The Pledge of Allegiance to the Flag of the United States of America was led by Mr. Morey.

MEMBERS PRESENT: Bruce Nevins, Jean Rowe, Richard Morey, Joe Moore, Adele Straub

ABSENT: Jerry Donley

OTHERS PRESENT: Attorney John Magyar, Building and Zoning Administrator Todd Herter, Supervisor Bill Saunders, several members from the public.

**PUBLIC HEARING**

Chairman Richard Morey opened the Public Hearing to consider the variance request by property owners John and Jean Kaminsky, of 31858 South Court, Dowagiac, MI 49047 with Tax ID Number 14-130-265-040-00. Richard Morey stated that the applicant requested a variance of section 6.04(A) of the Ordinance to replace an existing home with a new home. He stated that the applicant was requesting a 7 foot rear yard setback on a lot that is 103 feet in depth, when the Ordinance requires a 20 foot set back when a lot is greater than 80 feet.

Building and Zoning Administrator Todd Herter stated that the proposed new home would meet all required setbacks with the exception of the rear yard setback. One corner would be a 7 foot set back and the other corner a 10 foot set back off the rear property line.

Joe Moore questioned if the lagoon is the front of the property. Todd Herter answered yes. Joe Moore also asked for clarification on the two different publications for the hearing. Todd Herter explained that this property was originally thought to be lakefront, but later received information showing this property is lagoon front, and is being taxed as such. He explained that this information affected his calculations for the required setbacks.

Richard Morey asked if the new home would be in the same foot print as the old home. Todd Herter answered no. Richard Morey also commented that there were no stakes to show where the proposed home would be built.

Adele Straub questioned if the neighboring gray home was also a lagoon front property, and Todd Herter answered that it is a lakefront property. Discussion followed.

Attorney John Magyar commented to the board members that they must mark the exhibits for the record. Joe Moore referred to the Certificate of Survey dated 8/2/2008 recording lots 40 and 41 and marked it Exhibit B. The Board reviewed Exhibit C, the blown up layout of what the members already received (Exhibit A) showing the proposed new home location.

Kaminskyø were unable to attend the meeting but presented a letter to the board, which Adele Straub read aloud. The Kaminskyø stated that they have owned the property since 1994. Access to the property is South Court, which the survey shows as a private road. The letter stated that lots 38, 39, 40, and 41 require use of South Court for direct access to the homes and that South Court has no automobile traffic other than family and visitors. The letter also stated that between November and April, the Kaminskyø are the other ones who access South Court. The letter explained that they have maintained South Court themselves as far as the landscaping and plowing, at their own expense. The letter also explained that the Kaminskyø made the decision to demolish their existing small fishing cottage with no real foundation and rebuild, in order to have the space needed for their family and to follow through with their retirement plan ó to maintain residency at some point in the future. The Kaminskyø explained that their previous garage was on a 7 foot setback, the same setback they are now seeking. The letter stated that the proposed garage, which would be located on the back side of the home, and its layout would not cause any interference or inconvenience for anyone accessing the road, and would not alter the current lake view of the lone home on Lakeshore. Lastly, the letter stated that they are seeking the setback they previously had, and nothing more.

### **PUBLIC COMMENT**

Public Comment opened at 7:25 p.m. Jim Zimmer, owner of Lakeshore Home Builders, who was contracted by the Kaminskyø for the project, spoke regarding the variance. He referred to a photograph included with the Kaminskyø letter showing the corner of the previous garage at the 7 foot setback. Discussion followed. He stated that the dark markings represented where the previous home was located on the property, and the pink represented where the new home and garage would be. He stated that the new home would be larger, a story and a half rather than a single story, with a new attached garage.

Lilia Flores questioned how much closer the home would be to the channel, and Jim answered only 5 feet.

Bill Saunders spoke in favor of the variance request. He stated that the Kaminskyø are in the same situation he was in when he built his home on Magician Bay. He commented that he had to purchase 2 extra lots in order to fit the garage, and still have to cross the road to get to it. He stated that he doesnø believe they are seeking anything unreasonable.

Neighbor Nick Barnes also spoke in favor of the request, adding that he saw the prints and doesnø believe the Kaminskyø would be gaining an unfair advantage.

Lilia Flores, Mr. Kaminskyø neighbor, spoke in opposition of the variance request, referencing Light and Air Easement. Lilia stated that the Kaminskyø already were in violation after planting trees that block her view. Lilia added that the view is one of the reasons she bought her property, and that it is unfair to her and would block her view on both ends.

A member of the public questioned the minimum width of the road, noting that the print is 25 feet, and he thought 27 was the minimum. Attorney John Magyar answered that streets are

usually less than what they're platted, and sometimes the road isn't even where the plat shows. He added that we can only go by the plat, unless there is a testimony to contradict where the road is.

Adele Straub read written comments by Kathy and Jim Perreault stating that they have no problem with the variance request and welcomed any improvements.

Adele Straub also read written comment by Dennis Eagan, who stated that he didn't believe the property is lakefront, and should maintain setbacks of 30 feet as Eagan and Flores had to do when building in 2000 and 2001.

Adele Straub read aloud a letter by Joe and Kathleen Reitvelt, who have concerns about any changes to South Court. They opposed any changes on South Court and Magician Lake Park. Attorney John Magyar noted that Reitvelt contacted him to withdraw their concerns and letter regarding the hearing.

Adele Straub read the last letter from Karen Wagner Medima, approving of the variance, but adding that she would not want anything to change on South Court Street.

Jim Zimmer commented that the old home was very close to foot prints of the new home. He commented that the concerns were not relevant to the variance request and doesn't see where the concerns were related to the ordinance.

Chairman Richard Morey closed the public comment at 7:45 p.m.

Joe Moore asked Attorney John Magyar if there was concern for the board as far as someone losing their view. John Magyar answered that lots 38 and 39 are not lakefront lots, they are lagoon and there is not a setback request on the lagoon side, but the road side. He added that the board has to consider if it is a reasonably sized home lot, and when looking at rear lot variances, it is not appropriate to consider the view. He stated that the board should be looking at whether there is going to be an obstruction to the road, or a safety hazard.

Joe Moore questioned Jim Zimmer on the square foot of the old home and the new home. Jim Zimmer stated he was unsure of the old, but guessed it was between 1000-1200 square feet. He stated that the proposed new home would be 1651 square feet.

Jean Rowe asked how they got an address if South Court isn't a road, but an easement. Bill Saunders replied that when they platted the lots in the 1940s, they put in the 25 foot road, and the county did not accept it. He added that it was dedicated with the plats with the State of Michigan, is a private road, and is in the County Road Directory.

Chairman Richard Morey read through the Standards of Review and the board considered all. Discussion followed.

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

Joe Moore motioned, seconded by Jean Rowe, to approve the rear yard setback as presented.  
Motion carried by roll call vote:

Yes (5) Bruce Nevins, Jean Rowe, Richard Morey, Adele Straub, Joe Moore

No: (0): None.

Absent (1): Jerry Donley.

**ADJOURNMENT**

Chairman Richard Morey adjourned the meeting at 8:08 p.m.

Respectfully submitted,

Lindsay Krohne  
Recording Secretary