

**MINUTES SILVER CREEK TOWNSHIP  
ZONING BOARD OF APPEALS MEETING – NOVEMBER 10, 2020  
VARIANCE REQUEST BY TIM MASTERMAN**

Chairman Thom Brown called the Zoning Board of Appeals meeting to order at 7:00 p.m. on Tuesday, November 10, 2020.

The Pledge of Allegiance to the Flag of the United States of America was recited.

Thom Brown stated that Alternate Wendy Fitzgerald would take the place of Jean Rowe for the meeting. He stated that Mike Glynn would be the temporary Secretary. All members approved.

MEMBERS PRESENT: Thom Brown, Alternate Wendy Fitzgerald, Mike Glynn, David Grabemeyer, Bruce Nevins

MEMBERS ABSENT: Jean Rowe

OTHERS PRESENT: Building and Zoning Administrator Todd Herter, Township Attorney Seth Koches, Recording Secretary Liberty Nevins, members of the public

**APPROVAL OF AGENDA**

David Grabemeyer motioned to approve the agenda.

Wendy Fitzgerald seconded.

Motion passed by voice vote.

**APPROVAL OF SEPTEMBER 22, 2020 MINUTES**

Mike Glynn motioned to approve the September 22, 2020 Zoning Board of Appeals minutes.

Wendy Fitzgerald seconded.

Township Attorney Seth Koches stated that since the meeting was virtual, all votes must be taken by roll call vote.

YES (5): Thom Brown, Wendy Fitzgerald, Mike Glynn, David Grabemeyer, Bruce Nevins

NO (0): None

Motion passed by roll call vote.

**REASON FOR MEETING**

Thom Brown recited the Notice of Public Hearing, explaining the reason for the public hearing:

The request of Tim Masterman, 31115 Curran Beach Road, Dowagiac, MI 49047 (Parcel No. 130-004-050-13) for a 5-foot variance from the required 7-foot side yard setback requirement and a 10-foot variance from the required 30-foot front yard setback requirement in order to permit him to retain a newly-installed above-ground pool and landscaping structures in their present locations with the pool being located approximately 2 feet from the east side property line and 10 feet from a portion of the front property line (street side, behind unowned parcel no. 14-130-341-077-00) and to retain/install a 6-foot high opaque privacy fence partially located in the front yard, a portion of which is new and is intended to replace a split-rail fence which was in the same location; and a portion of which is existing. The property is located in the "WD" Waterfront District Zoning Classification. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Zoning Ordinance.

**BUILDING AND ZONING ADMINISTRATOR COMMENT**

Todd Herter stated that the driveway part of the Masterson property is Waterfront District, while the rest is Agriculture District. He stated that the required side yard setback is 30 feet, and that the required front yard setback is 50 feet. He stated that the pool is 27 inches from the side yard,

meaning the Mastermans' would need to be granted a 27-foot 8-inch variance. Todd stated that the Mastermans' would need a 30-foot variance instead of a 10-foot variance.

#### **APPLICANT COMMENT**

Tim Masterman commented that he wanted to install a new fence in the same place that the current fence sits.

Deborah Masterman commented that the fence would be to provide security and privacy around the pool.

#### **PUBLIC COMMENT**

Terry and Nancy Rejniak and Mollie Rose commented that they had no objection about the fence.

#### **ZONING BOARD OF APPEALS DISCUSSION**

Thom Brown asked if the Mastermans were told that they didn't need a building permit.

Tim Masterman responded that he had originally thought that he would not need a permit since the pool was above ground rather than a permanent fixture. He stated that his contractor for the pool never asked him for a permit.

Wendy Fitzgerald commented that she did not think there was an extreme practical difficulty at the property.

David Grabemeyer commented that he believed that it was an honest mistake that the pool was put in place without a permit.

Thom Brown read the Five 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.

Mike Glynn motioned to deny the variance request.

Wendy Fitzgerald seconded.

YES (3): Thom Brown, Wendy Fitzgerald, Mike Glynn

NO (2): David Grabemeyer, Bruce Nevins

Motion passed by roll call vote.

Variance denied.

#### **MOTION TO CONSIDER FENCE VARIANCE**

Mike Glynn motioned to consider discussion on the fence as a separate issue.

No member seconded.

YES (5): Thom Brown, Wendy Fitzgerald, Mike Glynn, David Grabemeyer, Bruce Nevins

NO (0): None

Motion passed by roll call vote.

Thom Brown, Mike Glynn, and David Grabemeyer agreed that the requested 6-foot fence would be okay.

David Grabemeyer motioned to allow a 6-foot fence.

Wendy Fitzgerald seconded.

YES (5): Thom Brown, Wendy Fitzgerald, Mike Glynn, David Grabemeyer, Bruce Nevins

NO (0): None

Motion passed by roll call vote.

### **ADJOURNMENT**

David Grabemeyer motioned to adjourn.

Wendy Fitzgerald seconded.

Meeting adjourned at 7:48 p.m.

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Liberty Nevins, Recording Secretary

Mike Glynn, alternate Secretary