

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS MEETING HELD ON JULY 17, 2019**

VARIANCE REQUEST BY JAMES & DENISE VANHULLE

Chairman Bruce Nevins called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Wednesday, July 17, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

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

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

ABSENT: Jean Rowe

APPROVAL OF APRIL 25, 2019 MINUTES

Dave Grabemeyer motioned to approve the April 25, 2019 Zoning Board of Appeals minutes. Bruce Nevins seconded. Motion passed by voice vote.

EXPLANATION/REASON FOR MEETING

Chairman Bruce Nevins read the Notice of Public Hearing, explaining the reason for the public hearing:

- The request of Denise and James Van Hulle, 55792 Indian Lake Road, Dowagiac, Michigan (Parcel No. 14-130-510-031-00) in the WD Waterfront Residential District Zoning Classification. The applicant is requesting a 9-foot variance from the required 30-foot front yard setback (lake side) contained in Section 155.079 of the Zoning Ordinance in order to permit the construction of a 12' x 27' 10" raised wood deck on the northeast (lake) side of the proposed new house. 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 read aloud his letter to the Zoning Board of Appeals members. Todd explained that the request is a result of misinformation on the zoning application completed by the contractor, which appeared to give them enough room to place a deck on the front of the home, when that was not the case.

Todd's stated that when he went out to do his footing inspection, he found that the home would be approximately 31' from the sidewall. Todd stated that the home could only be moved 2' back due to the location of a neighbor's tree and power lines, which would still not allow for the proposed deck.

Todd stated that the home is already built at the factory and features two patio doors which were planned to allow access to the deck. Todd stated that he is unsure of his stance because there is practical difficulty for the homeowner but it was caused by the contractor and could have easily been avoided.

Todd stated that the VanHulle's are asking for a 9' variance to allow them to build a 12' deck.

PUBLIC COMMENT

Chairman Bruce Nevins opened public comment at 7:07 p.m.

Applicant James VanHulle stated that he is disappointed in what the contractor provided. Mr. VanHulle stated that the deck could be built less than 18" high if it weren't for the hill. He stated they planned to move the house 2' back in order to get the variance needed from 11' to 9'.

Mr. VanHulle stated that it is a small lot with a steep hill. He added that he is trying to stay with continuity of the neighborhood, and the proposed deck would match the neighbors, although theirs would not be as large or as close.

Dave Grabemeyer asked if the pink flags are where the proposed deck would be. Mr. VanHulle answered yes.

Bruce Nevins asked Mr. VanHulle if he purchased the home before it was demolished, and Mr. VanHulle answered that it was in his wife's family.

Dave Grabemeyer asked which tree was in the way. Mr. VanHulle stated that there were two of his neighbor's sheds that would have to be temporarily moved, and there were already plans to put in a new pole for electric.

Mike Glynn stated that the conflict with the neighbor's tree would be there regardless. He added that a crane problem would have still existed.

Mr. VanHulle stated that he has no idea where the contractor's measurements came from.

Mike Glynn asked if the deck goes toward the lot coverage, and Todd Herter stated that it does not, because it's not under a roof.

Mr. VanHulle stated that he was not aware there was going to be a variance required.

Mike Glynn stated that the way he read the application, he thought they had 50' but only had 30', and can't move the house back to get the 50' because of the crane. Discussion followed.

Mike stated that he sees practical difficulty in the lot, not in the powerlines (utilities) and crane. He added that utilities can be moved, it just costs money.

Mr. VanHulle stated that the property lines are marked on both sides and the back property line goes into the middle of the road.

Bruce Nevins closed public comment at 7:30 p.m.

ZONING BOARD OF APPEALS DISCUSSION

Dave Grabemeyer stated that he doesn't see any reason why he shouldn't be able to put a deck there. He stated that he went to the property twice, and looked and measured it out.

Mike Glynn stated that he agrees with him because of...

Bruce Nevins stated that he doesn't believe the standards of review are designed for existing homes that are demolished and rebuilt.

Thom Brown read aloud the 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 it would not be detrimental to adjacent property and the surrounding neighborhood.

(2) The variance will not impair the intent and purpose of this chapter.

Mike Glynn stated that whenever you grant a variance, it does 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.

All agreed "no".

(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.

No comments were made.

(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 answered that it doesn't make any difference. All agreed.

MOTION TO APPROVE VARIANCE REQUEST

Dave Grabemeyer motioned to approve the 9' front yard setback variance. Mike Glynn seconded.

Roll call vote:

Yes (5): Bruce Nevins, Mike Glynn, Dave Grabemeyer, Thom Brown, Adele Straub

No (0): None.

Motion carried by roll call vote.

ADJOURNMENT

Bruce Nevins adjourned the meeting at 7:40 p.m.

Respectfully submitted,

Lindsay Krohne
Recording Secretary
To be approved at the next Zoning Board of Appeals meeting

Adele Straub, Secretary