

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS MEETING – AUGUST 11, 2020**

VARIANCE REQUEST BY CHRIS CHRISTERSON

Chairman Thom Brown called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Tuesday, August 11, 2020. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Thom Brown, alternate Wendy Fitzgerald, Mike Glynn, David Grabemeyer, Bruce Nevins, Jean Rowe

OTHERS PRESENT: Silver Creek Township Clerk Lorri Behnke, Building and Zoning Administrator Todd Herter, Recording Secretary Liberty Nevins, members of the public

MEMBERS ABSENT: none

APPROVAL OF AGENDA

David Grabemeyer motioned to approve the agenda.

Mike Glynn seconded.

Motion passed by voice vote.

APPROVAL OF JUNE 18, 2020 MINUTES

Jean Rowe motioned to approve the June 18, 2020 Zoning Board of Appeals minutes.

Mike Glynn seconded.

Motion passed by voice vote.

EXPLANATION/REASON FOR MEETING

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

The request of Chris Christerson, 51196 3rd Street, Dowagiac, Michigan (Parcel No. 14-130-009-026-10) for an 11' variance from the required 20-foot rear yard (side street) setback requirement contained in Section 155.079 (D)(1) and a 5' variance from the required 7' side yard setback requirement contained in 155.079 (D)(1) in order to permit construction of a 22' x 34' pole barn/accessory structure 9' off the 3rd Street easement and 2' from the west property line on the property. The applicant proposes to remove an existing light post and shed on the property. 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/ZONING ADMINISTRATOR COMMENT

Building/Zoning Administrator Todd Herter restated the purpose of the meeting. Todd stated that Chris Christerson was requesting a garage at 748 square feet, and that the ordinance allows a total of 1,500 square feet. Todd stated that if the easement at hand and is equal or greater than what the required setback is, it could be built up to the given easement. Todd stated that according to the site plan, the rear yard property goes to the far side of the 20-foot easement. He shared that the garage would be built 9 feet away from the easement. He shared that the Christerson rear yard setback would be 29 feet, rather than 20 feet. He shared that a 5-foot variance would be under discussion.

Thom Brown asked if the 5-foot variance was in reference to the distance from the road.

Todd Herter responded that the 5 feet would be from the side property line. He restated that the applicant was requesting a 5-foot variance so they could build 2 feet away from the property line instead of 7 feet.

Thom Brown asked what Todd Herter meant in reference to 9 feet versus 20 feet.

Todd Herter responded that 3rd Street is a private road along the back of the property and that the road is 20 feet wide. He stated that the rear yard setback is 20 feet. He stated that if an easement is equal to or greater than the required setback, then building can take place up to the edge of the easement. Todd said that the garage could be built on the edge of the road which also serves as the edge of the easement. He said that the applicant wants to build the garage 9 feet from that.

David Grabemeyer asked if it was 29 feet from the back of the applicant's lot and 9 feet from the road.

Todd Herter responded that David Grabemeyer was correct. Todd stated that the road by the applicant's property is private and not a county road.

APPLICANT COMMENT

Thom Brown opened public comment. He stated that each comment must be 3 minutes or less in length.

Mike Glynn suggested that the applicant be given more than 3 minutes to comment if necessary.

Thom Brown agreed. He asked for the applicant to speak.

Anita Christerson commented that she was requesting an easement so a pole barn could be built on her property. She stated that a garage would be built with a pole barn frame, and that the new structure would complement the house based on looks. She stated that she was requesting a 7-foot easement from her neighbor's garage so that an already existing parking pad could stay in place. Anita commented that the Christersons would have access to the water from the road by having the garage moved over more.

PUBLIC COMMENT

Thom Brown asked if any members of the public were in favor of the variance.

Linda Lawless stated that she is a neighbor of the Christersons. She commented that while the garage has been referred to as a pole barn, it would not have the look of a traditional pole barn. She commented that the structure would match the style of the house. Linda commented that with the garage being moved over, there would be enough space for emergency vehicles to come through. She stated that she believed it would be safe to grant the requested variance.

Mike Wessman commented that he lives two doors down from the Christersons. He stated that the garages within close proximity all blend in nicely with the houses, and believed that the Christerson's garage would blend in nicely as well. He stated that he supported the variance.

Bob Del Pietro commented that he is a next-door neighbor to the Christersons. He shared that he would support the variance.

Thom Brown stated that there were three neighbors in favor of the variance. He asked whether there were any concerns regarding the variance. There were no votes of opposition. Thom asked if there were any written comments.

Liberty Nevins responded that there had been none.

Thom Brown closed public comment.

ZONING BOARD OF APPEALS DISCUSSION

Thom Brown asked if any of the members had gone to view the property.

Mike Glynn, David Grabemeyer, and Bruce Nevins stated that they had viewed the property.

Thom Brown commented that he was concerned with the garage and its closeness to a neighboring building.

David Grabemeyer stated that he was concerned with the issue of the crowded buildings as well.

Thom Brown commented that he thought the garage could be moved over 5 feet and that a part of the parking pad would be lost. He shared that he thought having the garage 2 feet off of the property line was too close. He stated that the garage would still be 16 feet from the house which would allow room for vehicles.

David Grabemeyer commented that the garage would actually be 21 feet from the house.

Thom Brown commented that 21 feet would still be plenty of space.

Mike Glynn commented that the building that the garage would be in close proximity with was built before the current ordinance was in place. The rest of what Mike said was inaudible.

Thom Brown and David Grabemeyer stated that they could not understand what Mike Glynn was saying.

Mike Glynn commented that the 7 foot setback on the side yard should be maintained.

Bruce Nevins commented that by looking at a map it was hard to tell if the positioning of the garage would cause any issues. He stated that it had appeared that boats had been put into the lake near the applicant's property, likely because the public access had been closed.

Jean Rowe asked if the public access had any significance to the requested variance.

Bruce Nevins commented that if the public access were to be closed in the following year and boats were put in by the Christerson property again, it would be hard to tell if the spacing and location of the garage would be in the way.

Thom Brown stated that he believed the ordinance should be upheld and that the garage should be moved over 5 feet. He stated that if the garage were to be 2 feet from the neighboring building, the area would be too crowded.

Bruce Nevins asked if the garage would be moved over 5 or 7 feet.

Thom Brown responded that it would be moved 7 feet. He commented that a small part of the parking pad would need to be trimmed off, but that it would still be usable.

155.253 STANDARDS OF REVIEW

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.

ZONING BOARD OF APPEALS DISCUSSION CONTINUED

Thom Brown stated that he did not see a practical difficulty other than the location of the parking pad.

David Grabemeyer asked if the situation would be addressed as 1 or 2 variances.

Thom Brown responded that the applicant had originally requested 2 variances. He asked Todd Herter to explain again about the variance and the easement.

Todd Herter commented that the rear yard setback is 20 feet. He stated that if the easement is greater than or equal to the setback requirement, building can take place up to the easement.

MOTION TO DENY VARIANCE REQUEST

David Grabemeyer motioned to uphold the variance and to deny the 5-foot request, making it 7 feet instead.

Mike Glynn seconded.

Motion passed by roll call vote.

Yes (5): David Grabemeyer, Mike Glynn, Jean Rowe, Bruce Nevins, Thom Brown

No (0): none

Thom Brown stated that the variance had been denied and the ordinance would be upheld.

Mike Glynn stated that the members would have to go to the township hall and sign papers regarding the meeting.

Lorri Behnke commented that the paperwork would be available Thursday August 13, 2020.

PUBLIC COMMENT CONTINUED

Anita Christerson asked if she would be getting any of her \$678.00 back.

Thom Brown responded that he believed she would not.

Anita Christerson asked what steps could be taken next in the situation and whether or not she would have to go through the process again.

Thom Brown responded that the garage could be within 10 feet of the house.

Anita asked if it the garage could be within 10 feet of the house but not attached.

Thom Brown stated that the garage could be attached to the house but that it would be under a different set of rules.

Mike Glynn commented that Anita Christerson would need to contact the building department.

Anita Christerson asked if the Christersons could be granted half of what they had initially requested.

Thom Brown stated that according to the Standards of Review there was no practical difficulty keeping the Christersons from following the ordinance. Thom closed public comment once again.

ZONING BOARD OF APPEALS DISCUSSION – BY-LAWS AND RULES OF PROCEDURE

Jean Rowe commented that she wasn't sure what article 5a meant. She asked if the terms of the members of each office lasted a year. She stated that she thought the chair office would be rotated among the members each year.

Mike Glynn commented that he thought there would be an election of officers each year and that the same person could be elected more than once. He stated that would be the case for chairman, vice chair, and secretary.

Jean Rowe stated that she did not know what it meant for the secretary to verify notices.

Mike Glynn stated that it meant to verify the notifications for the zoning appeal meetings.

Jean Rowe commented that she wished people would identify themselves more on the Zoom calls.

Mike Glynn, Thom Brown, and Lorri Behnke agreed.

Thom Brown commented that in section 2d it said training must be for 4 hours per year. He questioned if the training could be divided into equal 2-hour segments or if the training had to happen as a whole.

Mike Glynn commented that it would just be 4 hours minimum in general.

Jean Rowe asked if it should be mentioned that the township would pay for the fee.

Mike Glynn commented that it would be unspoken. The rest of what Mike said was inaudible.

Jean Rowe, David Grabemeyer, and Thom Brown commented that they could not understand what Mike Glynn was saying.

Mike Glynn commented that the members should see if there could be a special meeting at the townhall to discuss matters in person.

Thom Brown stated that the discussion should be tabled since the members were having a hard time hearing each other.

David Grabemeyer asked if the Zoning Board of Appeals members could have a private meeting to discuss.

Thom Brown stated that he did not believe a private meeting would be allowed to happen. He stated that he thought if a meeting were to be had, it had to be public. Thom shared that he would try to organize a special in person meeting. He commented that it was difficult to find matters in the Zoning Ordinance book. Thom commented that it would be beneficial to have a reference spot on building permits in the index of the book.

David Grabemeyer agreed.

Lorri Behnke commented that the books are printed by a company. She stated she did not think the township would have the ability to add any text to the index. She stated that reference to building permits could be found online on the township website.

David Grabemeyer commented that the ordinance is frequently changed and updated. He asked if the changes were saved and added to the ordinance permanently every 2 years.

Lorri Behnke commented that the ordinance was revised about every 2 years. She stated that it was not updated more frequently because of the cost.

Jean Rowe commented that when people ask her about zoning, she gives them Todd Herter's phone number for reference.

The Zoning Board of Appeals members decided that writing personal notes in the Zoning Ordinance books helped in between the times the book was not updated.

ADJOURNMENT

Mike Glynn motioned to adjourn.

David Grabemeyer seconded.

Meeting adjourned at 8:24 p.m.

Liberty Nevins, Recording Secretary

Jean Rowe, ZBA Secretary