



# Fruitland Township Zoning Board of Appeals Minutes of July 14, 2008

***CALLED TO ORDER:*** 6:35 p.m.

***PLEDGE OF ALLEGIANCE***

***PRESENT:*** Chairman John Warner, Board members Clarence Gaertner, Gary Bole, Eileen Stoffan, and alternate member Steven Markel.

***ABSENT:*** Board Member Brian Lernowich

***ALSO PRESENT:*** Zoning Administrator Sandel and twenty-five (25) interested parties.

***AGENDA:*** Motion by Gary Bole, second from Clarence Gaertner ***ADOPTED***, to approve the July 14, 2008 Zoning Board of Appeals agenda.

***5 AYES, 1 ABSENT***

***MINUTES:*** Motion by Clarence Gaertner, second from Gary Bole ***ADOPTED***, to accept the June 9, 2008 meeting minutes as submitted.

***5 AYES, 1 ABSENT***

Chairman Warner explained the purpose and the function of the Zoning Board of Appeals.

***Public Hearing:***

6053 Murray Road

61-06-578-001-0001-20

**Scott and Sarah Sommer, homeowners,** request a variance from the following article to build a new structure outside of the original footprint:

Article III, Section 3.23 B (1) which states that nonconforming uses including buildings and structures may be maintained and repaired to be kept in sound condition and may be restored or rebuilt provided, however, that the restored or rebuilt building or structure is on the original footings and foundations or on new footings and foundations constructed exactly where the footings and foundations of the nonconforming structure were located. Restoration or rebuilding is permitted whether the nonconforming building or structure is damaged by fire, wind, act of God, or other casualty or is demolished and regardless of the cost of such rebuilding or restoration.

***Correspondence:***

- Warner, Norcross & Judd – Letter from William C. Fulkerson dated May 20, 2008, opposes variance.
- Sylvan Beach Resort Company- Letter from Jack Tukey dated February 6, 2008, supports variance.
- Letter from William E. Hohmeyer, Soils & Structures to Ms. Nancy Book dated December 4, 2007 recommending augercast/H pile with wood lagging as an appropriate method to pile drive.
- Dorothy Brewer, 6049 Murray Road, supporting variance.
- Margaret Dilley and Katherine Davis, 6035 Murray Road, letter dated June 11, 2008 supporting variance.
- Letter from William C. Fulkerson, Warner Norcross & Judd to Ms. Nancy Cuncannan, Michigan Department of Environmental Quality dated May 5, 2008, opposing variance.
- Warner, Norcross & Judd – Letter from William C. Fulkerson dated June 25, 2008, opposes variance.
- Tom Hartz, 6067 Murray Road, letter dated July 14, 2008, opposes variance.

***Public Hearing opened at 6:41 p.m.***

Scott Sommer, homeowner, stated that due to the age of the cottage which was built at the turn of the century, major restoration is required. Because of the degree of disrepair, the homeowner feels that a new structure would be the best solution. Mr. Sommer stated that he did receive approval from the Sylvan Beach Resort Company. The homeowner seeks variance to move the porch one (1) foot to line up approximately with other neighboring cottages, and to square off the back of the cottage, increasing square footage to meet Fruitland Township's minimum requirement. Mr. Sommer stated that the DEQ has approved his request. The homeowner proposes using SIP construction and sheet pile as the earth retention method.

Chairman Warner asked the homeowner if the property was located in the Critical Dunes area, and Mr. Sommer replied that it is in the Critical Dunes area and that the DEQ permit acknowledges that.

***Public Comment:***

Nancy Lilly, 6039 Murray Road – Clarified that the lake frontage west of the cottage is owned by the Sylvan Beach Association and that approval for the project was granted by Sylvan Beach Association Building Committee. Ms. Lilly also stated her approval of the variance request.

Oscar Brewer, 6049 Murray Road- Stated that he is approximately 6-8 feet from the applicant, and that he approves of the project.

Irene Pierson, Sylvan Beach Board Member/Modifications Committee Member- Stated that the board did approve of the project with recommendation that the back of the cottage be “squared off”. Ms. Pierson also stated that it would be the responsibility of the homeowner to repair any damage done to the roads, landscaping, etc.

Chris Meyer, Warner, Norcross & Judd- Stated that he is representing Nancy Book, 6057 Murray Road. Mr. Meyer stated his client's objection to adding a basement and expanding beyond the original footprint. Mr. Meyer stated that closing in the porch would adversely affect the view of Ms. Book. He also opposes expanding beyond the footprint due to the fact that the DEQ approved rebuilding “within the footprint of the cottage to be removed”. Mr. Meyer also stated that the Soils & Structures report recommends use of the augercast/H pile wall with wood lagging as an alternative, rather than sheet pile as an earth retention method. He expressed concern that the proposed method could cause harm to the foundation of Ms. Book's cottage.

Mike Brewer, 6049 Murray- Expressed approval for the project.

Scott Sommer, homeowner, stated that he would be willing to screen in the porch rather than use glass, and would agree to a crawl space under the porch and a full basement only under the main structure. Mr. Sommer also stated that he would be willing to use the augercast/H pile wall with wood lagging method as recommended by Soils & Structures.

Dorothy Brewer, 6049 Murray Road- expressed approval for the project, and has no objection to a second floor.

Chris Meyer, Warner, Norcross & Judd- Stated that his client, Ms. Book, does not object to the second floor.

***Public Hearing closed at 7:42 p.m.***

***Board Comments:***

Board member Stoffan clarified that according to Fruitland Township's Zoning Ordinances, adding a basement within the original footprint is allowed, as agreed upon at the Zoning Board of Appeals meeting on May 12, 2008.

Board member Markel stated that he had visited the site, and personally does not feel that the neighbor's views will be obstructed by the proposed structure. He stated that squaring off the back will make the building size conforming according to Fruitland Township's minimum square footage requirement.

Don Sandel, Zoning Administrator clarified that although the square footage would be resolved, the lot size coverage and setbacks would still be considered nonconforming.

Board member Bole stated that he has no problem with the squaring off of the back of the cottage. His main concerns are creating a closed in porch, adding a basement under the porch, and expanding forward by one (1) foot.

Board member Markel stated that if the applicant is willing to screen in the porch rather than use glass, and not add a basement under the porch, he is in support of the project conforming with the minimum square footage requirements. Board member Markel stated that if these stipulations were met, he would support the variance.

Chairman Warner stated that no matter what the Zoning Board of Appeals decides, the DEQ will be the higher authority. Chairman Warner urged the applicant to approach the DEQ for clarification of wording on DEQ permit which states "within the footprint of the cottage to be removed" although the prints submitted to the DEQ show the new structure is outside of the original footprint.

**Motion by Steven Markel, second from Clarence Gaertner, *ADOPTED*, to grant variance as submitted to Scott and Sarah Sommer, 6053 Murray Road, parcel #61-06-578-001-0001-20, from Article III, Section 3.23 B (1) with the stipulations that all DEQ conditions are met, there is not a basement under the porch, the porch is screened, and the soil retention method used for basement excavation shall employ augercast/H pile walls with wood lagging as recommended by Soils & Structures.**

***Roll Call: BOLE – NAY, Warner – NAY, Gaertner – AYE, Stoffan – AYE, MARKEL – AYE.***

**3 AYES, 2 NAYS, 1 ABSENT**

Chairman Warner informed Scott Sommer, homeowner, that he has 180 days to begin the project. Homeowner asked if an extension may be requested if necessary, due to the fact he must ask for clarification from the DEQ on permit wording. Chairman Warner stated that the applicant may apply for an extension, but he urges the applicant to approach the DEQ as soon as possible.

*5623 Murray Road*

61-06-665-000-0010-00

**Norman Dodds, applicant for Gerald and Elizabeth Gill, homeowners,** requests a variance from the following article to build a new structure outside of the original footprint:

Article III, Section 3.23 B (1) which states that nonconforming uses including buildings and structures may be maintained and repaired to be kept in sound condition and may be restored or rebuilt provided, however, that the restored or rebuilt building or structure is on the original footings and foundations or on new footings and foundations constructed exactly where the footings and foundations of the nonconforming structure were located. Restoration or rebuilding is permitted whether the nonconforming building or structure is damaged by fire, wind, act of God, or other casualty or is demolished and regardless of the cost of such rebuilding or restoration.

***Correspondence:***

- Thomas and Roberta Hook, 5631 Murray Road, supporting variance.
- Phil and Maryl Hook, 5627 Murray Road, letter dated July 8, 2008, opposing variance.
- Kyle and Mike Esh, 5627 ½ Murray Road, letter dated July 14, 2008, opposing variance.
- Jane and Lee Gardner, 5625 Murray Road, letter dated July 14, 2008, opposing variance.

***Public Hearing opened at 8:14 p.m.***

Norman Dodds, applicant for Gerald and Elizabeth Gill, homeowners, submitted a modified drawing for the Board's review. Mr. Dodds stated that he does have DEQ approval for building within the original footprint, and will apply for a modified permit pending the decision of the Zoning Board of Appeals. Mr. Dodds also stated that the Gill family is willing to perform a redescription of property lines with the neighboring property owned by Mr. Gill's father in order to increase property size and conform with required setbacks. Mr. Dodds stated that the proposed project will increase the functionality for an increasing family size.

***Public Comment:***

Gail Donovan, 5629 Murray Road – Stated that she would like to see the planned house moved back in line with neighboring house and expressed concern over obstruction of view. Ms. Donovan submitted pictures for the Board to review at this time.

Jane Gardner, 5625 Murray Road- Submitted pictures and a letter of correspondence for the review of the board stating opposition to proposed variance. Ms. Gardner expressed concern over the increase of obstruction of view for her residence. Ms. Gardner also believes approval of the variance request will increase nonconformance due to the presence of two structures and inability to meet setbacks. She stated objection to an increase of square footage of existing building and other alterations without permits over the years. Ms. Gardner also stated that she would like to see the planned house moved back in line with neighboring house and meet setbacks.

Kyle Esh, 5627.5 Murray Road- Stated that she is concerned with the increased obstruction to the view from her property over the years.

Norman Dodds stated that he does not feel neighbors have vested rights regarding views across Mr. Gill's property, and that they have zoning envelope rights only. Mr. Dodds also stated that as he would need to ask for modification to the DEQ permit, that all Board action be contingent on DEQ final approval.

***Public Hearing closed at 9:24 p.m.***

***Board Comments:***

Board member Bole stated that the farther the structure can be moved back the better.

Board member Markel stated he approves of moving the structure back farther than the original footprint as it will make the structure more in line with the other neighboring cottages.

Board member Stoffan stated that she believes the plans will enhance the value of the property.

**Motion by Eileen Stoffan, second from Gary Bole, *ADOPTED*, to grant variance as submitted by Norman Dodd, applicant for Gerald and Elizabeth Gill, homeowners, 5623 Murray Road, parcel #61-06-665-000-0010-00, from Article III, Section 3.23 B (1) with the stipulations that the *proposed structure be moved east 24 feet from plan submitted on July 14, 2008 as initiated by ZBA members on August 11, 2008, that a deed be recorded at the discretion of the Zoning Administrator in order to meet setbacks, structure will be moved east 24 feet from footprint of existing 26'x48' structure, a Quit Claim Deed be filed in order to meet setbacks* the surveyor must supply CAD file for Zoning Administrator, and pending DEQ approval of variance.**

***Roll Call: BOLE – AYE, Warner – NAY, Gaertner – AYE, Stoffan – AYE, MARKEL – NAY***

***3 AYES, 2 NAYS, 1 ABSENT***

Chairman Warner informed Norman Dodd, applicant for Gerald and Elizabeth Gill, homeowners, that he has 180 days to begin the project.

**Motion by Steven Markel, second from Gary Bole, *ADOPTED* to adjourn the July 14, 2008 Zoning Board of Appeals meeting at 9:48 p.m.**

***5 AYES, 1 ABSENT***

Respectfully Submitted,

Becky Dahl  
Recording Secretary