



Fruitland Township
White River Light Station Museum

Fruitland Township Zoning Board of Appeals Minutes of August 12, 2013

CALLED TO ORDER: 6:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman John Warner, Board members Penny Larson, Brian Lernowich, Eileen Stoffan and Alternate Judy Marcinkowski.

ALSO PRESENT: Attorney Kevin Huss, Zoning Administrator Sandel, Recording Secretary Sally Dion and 7 interested parties.

AGENDA: Motion by Judy Marcinkowski, second from Brian Lernowich, **ADOPTED**, to accept the August 12, 2013 Zoning Board of Appeals agenda as written.
5 AYES

MINUTES: Motion by Penny Larson, second from Eileen Stoffan, **ADOPTED**, to amend the July 8, 2013 Zoning Board of Appeals as follows: page 5 (~~John~~ Chairperson Warner feels the ordinance is...) and accept as amended.
5 AYES

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

Correspondence:

Email from Attorney Timmer with enclosures from John Halland regarding 2993 Scenic variance requests received today, August 12, 2013.

4483 Park Street

61-06-560-000-0019-00

Jeff Lanthier of Lanthier Construction LLC, on behalf of Michael Brewer, homeowner, requests a variance from the following article for the addition to an existing accessory building located in the front yard between the house and the road:

Article VIII General Provisions, Section 3.08, ACCESSORY BUILDINGS AND USES, (E) Detached accessory buildings shall: (2) be placed at least 200 feet from the road right of way if located in the front yard, between the house and the road in the RR, LDR, MDR, MHDR and HDR Districts.

Public Hearing opened at 6:10 p.m.

William Sininger, Attorney, 1042 Terrace Street, Suite B, Muskegon, MI 49442, is here on behalf of Michael Brewer, homeowner. This has already been in front of the board on one occasion however is being re-reviewed because of the record primarily but hopefully the outcome will be different also. He explains that Mr. Brewer purchased the property in 2012 and has improved the property dramatically. He would like to add 10' to an existing accessory building. The buildings on this property were erected in the 1930's and nothing has really been done to change the dimensions since. The garage is on a pad, it is not utilized as parking it is being used for storage. He referenced that 5 letters were provided, 4 from neighbors in support of the variance and 1 from the White Lake Fire Authority Chief Holman regarding emergency vehicle access down Park Street. The first time this request was heard some board members expressed concern that emergency vehicles could probably not get down Park Street easily if necessary. He points out there is a fence and a utility pole between this existing building and Park Street, these will continue to remain in the same spot. Since the first hearing White Lake Fire Authority Chief Holman visited 4483 Park Street on Tuesday June 11, 2013, to investigate where the outbuilding located in front of 4483 Park Street was hindering emergency vehicle access down Park Street. After review, it was determined that the outbuilding in front of the above location mentioned, currently does not impede on emergency vehicle access. He stated that the septic system, drain field, buried cables, etc. will hinder the placement elsewhere on the property. Approving this variance will not impact neighboring properties. He believes the variance can and should be granted and Mr. Brewer would like to add 12' instead of the 10' as previously requested if it could be considered. Mr. Sininger asked if the board had any questions for either himself or Mr. Brewer.

Chairman Warner asked if there were any questions.

Board Member Marcinkowski asks how long the house was on the property. Mr. Sininger answered since the 1930's. He believes both the house and the 15' x 15' existing building were there since the 1930's.

Board Member Lernowich asks if the existing building is 15' x 15', when he visited the site he didn't think so. Mr. Brewer answered from the audience that he taped it last night and it is 15' x 15'. Board Member Lernowich then asked and the request is to make it 15' x 25'. Mr. Brewer started answering from audience.

Chairperson Warner stated they do not take comments from the audience and asked that he address the board by going to podium and stating his name and address for the record, so he did.

Michael Brewer, 4483 Park Street, Whitehall, Michigan, to address questions.

Board Member Lernowich asks so the building is now 15' x 15' and you would like to go 15' x 25'. Mr. Brewer states he would really like to go 15' x 27', which would give him the ability to store a vehicle.

Chairperson Warner asked Mr. Brewer what he found unfavorable about the first decision.

Michael Brewer stated he was not satisfied with the first decision asking him to cut off 5' from one end of the building and adding it to the other end. He believes that was unnecessary. It seemed the primary concern heard was about emergency vehicle access and that has been resolved.

Chairperson Warner stated it makes the building less non-conforming and that was the reason for the first decision. He went on to state then Mr. Brewer threatens to sue the township for that decision and then comes back and asks for an even larger building addition.

Mr. Sininger stated Mr. Brewer was not happy with the decision. Their understanding after listening to the tape or what could be heard was not the issue of it being non-conforming but that of the emergency vehicles and the pole. The reason they are back tonight is because the record could not be made with the tape that was made.

Chairperson Warner stated he is sure when the building was built there were probably not zoning or building requirements. He understands that. The board has no control over the utility pole.

Chairperson Warner stated for the record he has 3 letters.

White Lake Fire Authority, Gregory Holman, Fire Chief.
Richard and Lynn King, 4503 Park Street, **supports**.
Suzanne M. Patterson, 4465 Park Street, **supports**.

Attorney Sininger stated there was a total of 5 letters. He asked if they had the ones from Dale McKenzie and Cindy Landis. Chairperson Warner stated we do not have those 2 in this packet. Mr. Sininger stated they had 4 close neighbors that support this variance request and the letter from the White Lake Fire Authority.

Public Hearing closed at 6:26 p.m.

Board Comments:

Board Member Stoffan states the reason we are here is to re-discuss in a public way exactly what was discussed before to establish the record and she supports this variance this time as she did the last time, she does not think we should be amending a variance request, which is not our job. It does not impact any neighbors, it goes straight back on the owners property, it doesn't change any setbacks, it is already non-conforming, he wants to add on the back of it.

Board Member Larson states there was concern at the last meeting regarding parking and having a clear line of vision in addition, this is where the decision came from to remove 5' from the front and add it to the back. She also had strong concerns about emergency vehicles. That is why she voted against it last time. She does appreciate the letter from the Fire Chief, which is helpful this time.

Board Member Lernowich stated he has been to the site, in with what Board Member Larson stated about having a clear line of vision, after looking at the parcel, drawing, barricades etc., he believes by the time Mr. Brewer would tear this building down and rebuilds a 15' x 25' he could take that money and turn this building 90% and move it 20' back from where it sits now to make it less non-conforming.

Board Member Marcinkowski states she agrees with Board Member Stoffan that it is not the purpose of this board to amend a variance request. If anything the variance should be denied, he should not be asked to remove 5' as this creates a financial hardship.

Chairperson Warner states this board has asked applicants in the past to do something other than what they requested; it is done with the consent of whoever is here on behalf of the project, which is what was done in Mr. Brewer's case. Whenever they can get a variance less non-conforming they try to do so.

Board Member Stoffan reiterates that the board was in favor of allowing an addition on this building at the last meeting and it would still have been non-conforming.

The Board Members reviewed the Variance Decision Checklist.

Motion by Eileen Stoffan, second from Judy Marcinkowski, **FAILED**, to grant variance as requested by Jeff Lanthier of Lanthier Construction LLC, on behalf of Michael Brewer, homeowner, 4483 Park Street, 61-06-560-000-0019-00, for the addition to an existing accessory building located in the front yard between the house and the road.

Roll Call Vote: Stoffan –AYE, Lernowich-NAY, Larson-NAY, Marcinkowski-AYE, Warner-NAY.

Chairperson Warner advised he has up to 30 days to appeal in Circuit Court.

2293 Scenic Drive

61-06-160-000-0004-00

David L. Bossenbroek, Attorney, on behalf of Robert and Kathy Hoogstra, homeowners, request a lot width variance and a side yard setback variance from the following article and sections:

Article VIa Lake Michigan Shoreline District

Section 6.04a Site Development Standards

Required Lake Frontage and Lot Width - *There shall not be less than one hundred five (105) feet of Lake Michigan frontage, as measured perpendicular or as close to perpendicular as possible to the side lot lines at both the crest of the bluff and at the ordinary high water mark of 580.5 IGLD 1985, for each single-family dwelling, dwelling unit, cottage, any other such dwelling, lot, or parcel with lake frontage. Each lot (whether or not it has Lake Frontage) shall have a minimum width of one hundred five (105) feet, which minimum lot width shall be maintained along the entire length/depth of the lot or parcel.*

Side Yard Setback - *Ten (10) feet as measured to the foundation.*

Section 6.05a Waterfront Access, Use, and Related Matters

3. Waterfront Access Standards

- e) *In addition, the following overall requirements shall also be applicable:*
 - i. *There shall be at least one hundred five (105) feet of Lake Michigan frontage as measured along the ordinary high water mark of the lake for each single-family home, dwelling unit, cottage, condominium unit, site condominium unit, or apartment unit utilizing or accessing the lake. The lot width as measured perpendicular to the side lot lines (or as nearly perpendicular as possible) at the ordinary high water mark of 580.5 IGLD 1985 shall be at least one hundred five (105) feet.*

Public Hearing opened at 6:42 p.m.

David Bossenbroek, Attorney, 900 Third Street, Muskegon, MI 49440, spoke on behalf of Robert and Kathy Hoogstra. The Hoogstra's are asking for a 1' lot width variance and 10' side yard setback variance. He stated he believes this issue was argued and presented pretty well at the July meeting so he was going to only state a few things. Going through the 6 standards they have to look at he doesn't think any of them motivate against not granting the variance. This is a very unusual set of circumstances likely to never be repeated. No one intended these consequences. He then gave his opinion on why he feels the Hoogstra's meet all of the 6 standards. He also believes the threat of lawsuits that were contained in affidavits registered with the Muskegon County Register of Deeds by Mr. Halland would be taken away if the variances were granted. The variance requests need to be granted giving the Hoogstra's the right to occupy this property.

Board Member Lernowich asks if the Hoogstra's knew about the dimensional inadequacies. Mr. Bossenbroek stated yes they knew the whole story before they purchased the property; however, they did not create this issue.

Chairperson Warner stated since the last meeting he had spoken with Mr. Bossenbroek and Kathy Hoogstra to see if they were working on purchasing the 10' from Mr. Halland. Kathy Hoogstra advised him they have tried to contact Mr. Halland with no answer.

Mr. Bossenbroek stated he had been in contact with Scott Timmer, Attorney, representing Mr. Halland. There has been some discussion.

Scott Timmer, Attorney, representing Mr. Halland started by asking for confirmation of receipt of Email with enclosures sent this morning. Chairperson Warner states that yes it was received. He asked if all members received a copy and had time to read it. He states this house is 3” from the property line. This house would never be able to be maintained on the North side and this needs to be considered when talking about granting a variance for the side yard setback. He stated the only way to take care of the issue at hand is for the Hoogstra’s to purchase the 10’ for \$75,000.00 which is what Mr. Halland purchased it for in 2007. He understands it is not the board’s duty to negotiate between parties, however, believes with Mr. Halland willing to sell the 10’ for \$75,000.00, the same price he paid for it indicates his willingness to solve this problem. He then gave his opinion on the 6 standards and why he believes this request should be denied. He expressed he disagrees with a letter written by Attorney Even dated April 17, 2013, which stated his opinion is that whether the variance is granted or not the dwelling may be occupied, however, any buyer of the lot should be aware that no further structural improvements may be made to the lot/dwelling given its on-conformance. If you can occupy a house that is in violation of setback or width requirements anyone can violate the ordinance. He does not agree the house can be occupied.

Zoning Administrator Sandel states for the record that the house is 4” from the property line.

Pat Donahue, 2255 Scenic Drive, **supports variance.**

Public Hearing Closed at 6:57 p.m.

Chairperson Warner states his personal opinion is that the best thing to resolve this would be for the Hoogstra’s to purchase the 10’ and he urges Mr. Halland and his attorney to work this out with them.

Board Member Stoffan comments that in order to split the property and move the house Mr. Halland had to purchase the 10’.

Board Member Larson states she agrees with Board Member Stoffan and that the price of 75,000 has been offered and she believes this is an effort.

The Board Members reviewed the Variance Decision Checklist.

Motion by Eileen Stoffan, second from Brian Lernowich, **ADOPTED**, to deny variance as requested by David L. Bossenbroek, Attorney, on behalf of Robert and Kathy Hoogstra, homeowners, 2293 Scenic Drive, 61-06-160-000-0004-00, for lot width and side yard setback.

Roll Call Vote: Marcinkowski-AYE, Larson-AYE, Lernowich-AYE, Stoffan-AYE, Warner-AYE.

Chairperson Warner advised he has up to 30 days to appeal in Circuit Court.

ADJOURNMENT

Motion by Penny Larson, second from Eileen Stoffan, **ADOPTED** to adjourn the August 12, 2013 Zoning Board of Appeals meeting at 7:11 p.m.

5 AYES

Respectfully Submitted,

Sally Dion
Recording Secretary