



Fruitland Township Zoning Board of Appeals Minutes of October 12 and 14, 2009

CALLED TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman John Warner, Board members Gary Bole, Clarence Gaertner, Brian Lernowich, and Eileen Stoffan.

ALSO PRESENT: Zoning Administrator Sandel, Attorney Robert Eklund and 21 interested parties.

AGENDA: Motion by Gary Bole, second from Clarence Gaertner, ***ADOPTED***, to approve the October 12, 2009 Zoning Board of Appeals agenda as submitted.

5 AYES

NOMINATIONS: Motion by Clarence Gaertner, second from Gary Bole, ***ADOPTED***, to nominate John Warner as Chairman.

Motion by Clarence Gaertner, second from Gary Bole, ***ADOPTED***, to close nominations and to elect John Warner as Chairman to the Fruitland Township Zoning Board of Appeals.

5 AYES

Motion by Brian Lernowich, second from John Warner, ***ADOPTED***, to nominate Clarence Gaertner as Vice Chairman.

5 AYES

Motion by Brian Lernowich, second from Eileen Stoffan, ***ADOPTED***, to close nominations and to elect Clarence Gaertner as Vice Chairman to the Fruitland Township Zoning Board of Appeals.

5 AYES

Motion by Gary Bole, second from Eileen Stoffan, ***ADOPTED***, to nominate Eileen Stoffan as secretary.

5 AYES

Motion by Gary Bole, second from Clarence Gaertner, ADOPTED, to close nominations and to elect Eileen Stoffan as Secretary to the Fruitland Township Zoning Board of Appeals.
5 AYES

MINUTES: **Motion by Clarence Gaertner, second from Eileen Stoffan, ADOPTED, to approve the February 23, 2009 Zoning Board of Appeals meeting minutes as submitted.**
5 AYES

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

Public Hearing:

5465 Scenic Drive *61-06-142-000-0015-10*

John D. and Mary F. Loeks, homeowners, request a variance for the construction of an accessory structure and a Porte Cochere (covered car port).

Correspondence:

- Glenn and Helen William, 5441 Scenic Drive, email supporting variance.

Mr. Loeks explained his situation and reasons for requesting variance.

Zoning Administrator Sandel explained this is a unique situation because the parcel is divided by a street. The normal setback allowed is thirty feet (30').

Public Comment Open
No Public Comment

Chairman Warner asked Mr. Loeks how many homes are North and South of him. Mr. Loeks stated eight (8) homes to the South and three (3) homes to the North.

Board Member Bole asked if the garage could be placed further back. Zoning Administrator Sandel handed out an alternate plan moving it back further, however, this may not be approved by the DEQ. According to Mr. Loeks, the DEQ was coming possibly tomorrow.

Public Comment Closed

Chairman Warner read and reviewed the Variance Decision Checklist with the rest of the board members.

Motion by Gary Bole, second from Brian Lernowich, ADOPTED, to adjourn the proposed accessory building until November giving the applicant time to get input from the DEQ.
5 AYES

Motion by Eileen Stoffan, second from Clarence Gaertner, ADOPTED, to grant variance as submitted for the Porte Cochere (covered car port).
ROLL CALL: Lernowich AYE, Stoffan AYE, Gaertner AYE, Bole AYE and Warner AYE

Public Hearing:

5623 Murray Road

61-06-665-000-0010-00

Lee and Jane Gardner, applicants, request an appeal of the Zoning Administrator's decision to approve a zoning application as submitted by Gerald S. and Elizabeth Gill.

Chairman Warner advised public comment was being limited to five (5) minutes and the meeting was to end at 9:00 p.m. and if all matters had not been addressed, the meeting will reconvene at a later date. He also advised that he believes we are clarifying for the court. Mr. Sininger (Gardner's Attorney) agreed.

Correspondence:

- Rafael & Shirley Frank, 5637 Murray Road, email **opposing** project.
- Alan Jackman, 6083 Murray Road, email **opposing** project.
- T. K. Hook, 5631 Murray Road, fax **opposing** project.
- Mitch & Pam McNeil, 4921 Scenic Drive, email **supporting** project.
- MaryLind Andresen, 5662 Murray Road, email **supporting** project.
- Lisa & David Peterson, Jr., 5660 Murray Road, email **supporting** project.
- Cynthia & Bill Trask, 5617 Murray Road, email **opposing** project.
- Amy Rudy, 7120 Starboard Drive, email **supporting** project.
- Bruce Clotworthy, email **supporting** project.
- Annie McNeil, email **supporting** project.
- Chris McNeil, email **supporting** project.
- Mary & Porter McNeil, 4921 Scenic Drive, email **supporting** project.
- Ingrid Andresen Lindfors, 5662 Murray Road, email **supporting** project.
- Elizabeth Gill, 5623 Murray Road, email **supporting** project.
- Elizabeth Doyle, 4909 Scenic Drive, email **opposing** project.
- Gail Donovan, 5629 Murray Road, email **opposing** project.
- Anne Oltmanns, email **opposing** project.
- Douglas Schmidt, 6111 Murray Road, email **neutral** on project.
- Jane Sellers, email **opposing** project.
- Jean Schmidt, 6111 Murray Road, email **neutral** on project.
- Betsy Grein, 5780 Oaktree Lane, email **opposing** project.
- Tom Grein, 5780 Oaktree Lane, email **opposing** project.
- Phil & Maryl Hook 5627 Murray Road, email **opposing** project.

Mr. Sininger (Gardner's Attorney) did brief overview using his filing for the Fruitland Township Zoning Application on Remand from the Muskegon County Circuit Court case number 09-46581-AA, with attachments and exhibits, making it part of the record.

Public Comment Open

1. **Issue raised - The Gill plan violates the standards of zoning district (Lake Michigan Shoreline District) set forth in Sections 6.01(a), 6.04(a) and 3.31(E).**
 - Jane Gardner, 5625 Murray Road, stresses it is her belief that Sections 6.01a, 6.04a and 3.31(E) should have been used because they are more stringent, however, if Section 3.23(B) of the Fruitland Township Zoning Ordinance is what the zoning approval was granted on, then both 3.23 (B)(1) and (B)(3) should have been used.

- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, stated he agrees with the Zoning Administrator, Zoning Board of Appeals, and the Zoning Enabling Act that the plan submitted that approval was based upon does comply with Section 3.23(B)(1) Expansion and Substitution of Nonconforming Buildings and Structures.
- Nancy Coronado, 6067 Murray Road, has no objection to rebuilding, however, objects to the location and size of the home as it is being rebuilt.

Zoning Administrator Sandel believes that the intent of Section 3.23(B)(1) is to allow rebuild on the same footprint.

Public Comment Closed

Board Comments:

Consensus of the Board is that Article 6a does not address nonconforming issues like Section 3.23(B)(1) does.

Motion by Stoffan, second from Bole, *ADOPTED*, to state for the record that the Zoning Board of Appeals affirms the Zoning Administrator’s decision that Section 3.23 overrides the zoning district requirements of Sections 6.01(a), 6.04(a) and 3.31(E).

***ROLL CALL:* Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE, and Warner – AYE.**

5 AYES

2. Issue raised - Old house was not a lawful nonconforming structure/use. Section 3.23(B) does not apply.

Mr. Sininger (Gardner’s Attorney) did brief overview using his filing for the Fruitland Township Zoning Application on Remand from the Muskegon County Circuit Court case number 09-46581-AA, with attachments and exhibits, making it part of the record.

Zoning Administrator Sandel believes the home being rebuilt is a legal nonconforming structure; the township has been collecting taxes and building permits have been issued in previous years.

Public Comment Open

- Jane Gardner, 5625 Murray Road, contends that after a fire the house was rebuilt and expanded illegally and then quoted zoning from 1946 ordinances regarding two (2) homes on one (1) parcel and if there were where they must be located.
- Betsy Grein, 5780 Oaktree Lane, stated house that burned did not have a kitchen; it was a guest house with one room, considered a playhouse.
- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, stated there is no evidence these are not legal nonconforming structures and agrees with Zoning Administrator Sandel.
- Lee Gardner, 5625 Murray Road, believes the nonconformity was caused by the homeowners not the township.

Public Comment Closed

Zoning Administrator Sandel states he has no knowledge of where the brow of Lake Michigan was when these homes were built so they could very well have met the ordinance back then.

Motion by Stoffan, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals affirms the Zoning Administrator's decision that the old house is a legal nonconforming use.

ROLL CALL: Bole – AYE, Gaertner – AYE, Stoffan – AYE, Lernowich – AYE and Warner – AYE.

5 AYES

Chairman Warner recessed this meeting at 9:15 p.m. to reconvene on Wednesday, October 14, 2009 at 7:00 p.m.

Chairman Warner reconvened meeting on Wednesday, October 14, 2009 at 7:01 p.m.

PRESENT: Chairman John Warner, Board members Gary Bole, Clarence Gaertner, Brian Lernowich, and Eileen Stoffan.

ALSO PRESENT: Zoning Administrator Sandel, Attorney Robert Eklund and 13 interested parties.

3. Issue raised - Section 3.23(B)(1) concerning expansions/substitutions of nonconforming buildings does not authorize a new house to be rebuilt. Also see Section 2.01(D).

Mr. Sininger (Gardner's Attorney) stated he disagrees with how the issue raised was stated. He stated their position is the house may be rebuilt but only the same square footage it was prior.

Zoning Administrator Sandel stated he reviewed Sections 3.23(B)(1)(2) and (3) and the only one that stated rebuild was 3.23(B)(1) and he had also in May 2008 asked the Board for clarification regarding rebuilding in the same footing. He asked if a building is going to be rebuilt in the same footing, can the building be lower or higher as long as it is in the same footing. He gave examples of adding a basement or making the roof higher as long as the footing was the same. The Board agreed that they would interpret the ordinance as a two-dimensional drawing, so as long as the footprint is the same, the building can be lower or higher.

Public Comment Open

- Lee Gardner, 5625 Murray Road, disagrees with Zoning Administrator Sandel.
- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, stated his interpretation of 3.23(A) references General Conditions, Section 3.23(B)(1) references rebuild on same footprint, Section 3.23(B)(2) and (3) reference expanding outside the footprint.
- Larry Nix, Senior Planner, Williams & Works stated that he agrees that Section 3.23(B)(1) applies and it does not state the home must stay the square footage as was prior.
- Jane Gardner, 5625 Murray Road, stresses that her interpretation of Section 3.23(B)(1)(2) and (3) are different and that Section 3.23(B)(1) and (3) should have been used when determining zoning approval for this project.
- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, stated that Section 3.23(B)(2) and (3) should only be used if expanding the footprint which the Gill's did not.
- Jane Gardner, 5625 Murray Road, stresses that she believes language in Section 3.23(B)(1) does not allow enlarging which would also mean height.

Public Comment Closed

Fruitland Township Attorney Eklund stated he believes you could consider both Section 3.23(B)(1) and (B)(3) but (B)(1) was used because (B)(3) is only if the Gill's went out of the footprint which they did not.

Motion by Bole, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals affirms the Zoning Administrator's decision that Section 3.23 (B)(1) allows the house to be rebuilt on the same footprint up to the maximum allowable height.

ROLL CALL: Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE.

5 AYES

Chairman Warner prompted a discussion on how Board Members would interpret the definition of the words rebuild and restore.

Motion by Bole, second from Gaertner, *ADOPTED*, to state for the record consensus of the Zoning Board of Appeals members is to define (Rebuild) as construct new on the same footprint up to the maximum allowable height and (Restore) as to put back what was there.

ROLL CALL: Bole – AYE, Gaertner – AYE, Stoffan – AYE, Lernowich – AYE and Warner – AYE.

5 AYES

4. Issue raised - The new house plans do not comply with Section 3.23(B)(3).

Open Public Comment

- Jane Gardner, 5625 Murray Road, contends her lake view has been restricted. Believes Section 3.23(B)(3) should have been used because of a nonconforming setback dimension.
- Lee Gardner, 5625 Murray Road, height issue is not only with the house it is with the decks also.
- Kyle Esh, 5627.5 Murray Road, contends her lake view has also been affected.
- Larry Nix, Williams & Works, stated Section 3.23(B)(3) only applies if going outside the footprint.
- Mr. Sininger (Gardner's Attorney) disagrees with Section 3.23(B)(1) being used because it does not deal with lake view like Section 3.23(B)(3) does.
- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, reiterates Section 3.23(B)(3) does not apply, they are not expanding outside of footprint.
- Jane Gardner, 5625 Murray Road, believes not expanding is a cloudy issue because the house that is being replaced was moved across the street.
- Dan Bylenga, Rhoads McKee PC, Section 3.23(B)(2)(3) deals with expansion only, absolutely does not apply to this property.
- Lee Gardner, 5625 Murray Road, reiterates view has been affected, upset that others say different.
- Jane Gardner, 5625 Murray Road, Section 3.23(B)(3) only addresses the lake view, Section 3.23(B)(1) was written to apply to all areas of the township.

Public Comment Closed

Motion by Gaertner, second from Bole, *ADOPTED*, to state for the record that the Zoning Board of Appeals *affirms* the Zoning Administrator’s decision that Section 3.23(B)(3) does not apply because the footprint was not expanded and thus does not make the structure any more nonconforming with respect to setbacks.

ROLL CALL: Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE.

5 AYES

5. Issue raised - The new house does not comply with maximum height requirements. See Sections 3.23(B)(1) and (3) and Section 6.04(a) also see Section 2.01(H).

Public Comment Open

- Jane Gardner, 5625 Murray Road, provided picture of Gill’s house with data from a surveyor, then explains that what was used for averaging the height is a fake roofline. Zoning Administrator Sandel asked who surveyed and if it was a signed and sealed drawing. If it was then he would consider. If not he explained that he spoke with Building Official Troy DeBrot and used what he said to measure by.
- Mr. Sininger (Gardner’s Attorney) refers to zoning definitions of story and half story and stated he believes this home is four (4) stories tall.
- Dan Bylenga, Rhoades McKee PC, refers to zoning site development standards which stated building height, 35 feet or 2 ½ stories.

Public Comment Closed

Motion by Bole, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals *affirms* the Zoning Administrator’s decision that the 35’ or 2 ½ stories is either or, and the 35’ average meets the zoning ordinance that was effective at the time of zoning approval.

ROLL CALL: Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE.

5 AYES

6. Issue raised - The basement floor is located outside the footprint of the old house and violates the Sections 3.23(B)(1), 3.31(E).

Dan Bylenga, Rhoades McKee PC, on behalf of Gills stated that this concrete floor was not put there and will not be.

No decision necessary because the Gill’s attorney stated it has been decided that the basement floor has not and will not be constructed outside of the footprint.

Public Comment Open

Jane Gardner, 5625 Murray Road, stated retaining walls are not compliant.

Public Comment Closed

Zoning Administrator Sandel refers to Section 6.04(a)(7) which allows retaining walls but no higher than three (3) feet.

Motion by Lernowich, second from Bole, *ADOPTED*, to state for the record that the Zoning Board of Appeals by consensus agree that if the retaining walls are 3' or less above original grade they are okay to remain, if higher than 3' above original grade they must be cut down to 3' maximum height above original grade.

ROLL CALL: Bole – AYE, Gaertner – AYE, Stoffan – AYE, Lernowich – AYE and Warner – AYE.

5 AYES

7. Issue raised - The new deck is outside of the old house footprint and violates Section 3.23(B)(1).

Public Comment Open

- Jane Gardner, 5625 Murray Road, issues with decks, the size is outside of the footprint.
- Norman Dodds, Architect, stated has submitted as built drawing of prior decks and pergolas to Zoning Administrator Sandel.

Public Comment Closed

Zoning Administrator Sandel explained he approved the decks and pergolas using Section 3.07(B)(2) which states the deck can project fifteen (15) feet into the rear yard setback. The measurement came from the prior existing structure.

Motion by Bole, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals *affirms* the Zoning Administrator's decision that the deck can extend 15' into the rear setback according to Section 3.07(B)(2) as measured from face of structure.

ROLL CALL: Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE

5 AYES

8. Issue raised - The proposed decks and pergolas violate Section 3.07(B) and (C).

Public Comment Open

- Jane Gardner, 5625 Murray Road, stresses she has issues with height and pergolas. She believes anything attached to decks will be more than six (6) feet above grade and that the pergolas make the deck a structure.

Zoning Administrator Sandel advised we are watching the decks to be sure they comply with the no higher than six (6) foot requirement and that according to the Architect railings will not be used. The pergolas are being interpreted as architectural features according to Section 3.07(A).

- Jane Gardner, 5625 Murray Road, stated that the support pillars for the pergola constitute structure.

Zoning Administrator Sandel advised he has made the Architect aware that the support pillars are not to restrict neighbors view.

Public Comment Closed

Motion by Stoffan, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals affirms the Zoning Administrator’s decision as stated in his letter dated March 30, 2009 to Mr. Gerald Gill that the deck including railings can not exceed 6’ above original grade.

***ROLL CALL:* Bole – AYE, Gaertner - AYE, Stoffan - AYE, Lernowich – AYE and Warner – AYE.**

5 AYES

Motion by Bole, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals reverses the Zoning Administrator’s decision and by consensus agree that the pergola’s may not have vertical supports and may not extend more than 15’ into rear setback as measured from face of structure and may not extend into the side yard setback as measured from face of structure.

***ROLL CALL:* Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE.**

5 AYES

9. Issue raised - The plans require grade changes in violation of Section 6.04(a)(6) and 3.18.

Public Comment Open

- Jane Gardner, 5625 Murray Road, stated she believes Attorney Eklund used the Gill’s Attorneys brief to prepare his ZBA Appeal Summary. Chairman Warner stated for the record that was not true, most did not get the Gill’s Attorneys brief until Saturday or after.
- Supervisor Sam St. Amour, thanked all Zoning Board of Appeals Members and staff for carrying out their duties and applying ordinances as best as possible.
- Todd Hendricks, Rhoades McKee PC, on behalf of Gills, agrees with Zoning Administrator that unreasonable fill has not occurred and that they did not exceed three hundred (300) yards which is allowed according to Section 3.18 (C)(10) without a permit.
- Lee Gardner, 5625 Murray Road, elevation has changed; it was done to accommodate them personally.
- Jane Gardner, 5626 Murray Road, stated the DEQ and township didn’t know about the fill until after it was done.
- Norman Dodds, Architect, stated the DEQ amended their permit and they did not go beyond what was permitted.

Public Comment Closed

Zoning Administrator Sandel explained that Nancy Cuncannan from the DEQ and Jeff Auch from Muskegon Conservation District and himself met at the site and that the areas that were filled in were a bowl under the house and the driveway area and that they did not believe more than three (300) yards of fill were brought in.

Motion by Lernowich, second from Gaertner, *ADOPTED*, to state for the record that the Zoning Board of Appeals affirms the Zoning Administrator’s decision and the DEQ report that the amount of fill brought in complied with Section 3.18 (C)(10).

***ROLL CALL:* Lernowich – AYE, Stoffan – AYE, Gaertner – AYE, Bole – AYE and Warner – AYE.**

5 AYES

- Jane Gardner, 5625 Murray Road, stated she had other concerns she would like addressed as follows:
Septic System – Where is it being placed?
- Norman Dodds, Architect, answered the DEQ issued a permit for the replacement of the septic system which indicates where they will allow it to be placed. However the permit has expired but will be reapplied for when ready.
- Lee Gardner, 5625 Murray Road, stated he wants the one hundred (100) foot setback adhered to.

Zoning Administrator Sandel stated until we see where it will be located he can not provide a decision.

Chairman Warner advised there is no decision or appeal to be made regarding the septic system.

Jane Gardner, 5625 Murray Road, stated the porch floors extend beyond the footprint, asked for definition of deck, stated corner of deck/retaining wall on SW side is outside of footprint.

**Motion by Clarence Gaertner, second from Brian Lernowich,
ADOPTED to adjourn the October 14, 2009 Zoning Board of
Appeals meeting at 12:30 a.m.**

5 AYES

Respectfully Submitted,

Sally Garvey
Recording Secretary