

**SCHOOLCRAFT TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF MEETING HELD DECEMBER 3, 2015**

A meeting of the Schoolcraft Township Zoning Board of Appeals was held on December 3, 2015 at the Schoolcraft Township Hall commencing at approximately 7:18 p.m. (upon the arrival of the Chairman).

Members Present: Terry Blodgett, Chairman
Raymond Hocevar
Gary Steensma
Ken Hovenkamp
Jack Westendorp, alternate

Members Absent: John Gardner

Also present were Craig A. Rolfe, Township Attorney; Chris Hamilton, Zoning Administrator; and approximately twenty-five citizens.

MINUTES OF JULY 9, 2015 MEETING

On motion by Mr. Hovenkamp, supported by Mr. Hocevar, the minutes of the Zoning Board of Appeals meeting on July 9, 2015 were unanimously approved as submitted.

**PATRICK JOYCE VARIANCE APPLICATION
(11060 WEST HIGLEY CIRCLE, PARCEL NO. 3914-06-222-040)**

The Township Attorney requested an opportunity to preliminarily address several matters relevant to ZBA consideration of the variance application. He noted written comments received prior to the meeting referred to plat restrictions prohibiting sheds in the Sugar Island Estates plat, and advised that as the Township had no legal authority to administer or enforce plat restrictions, any comments on the implications of those restrictions to the pending variance application would not likely be of any value to the ZBA in deciding the matter.

The Township Attorney also generally remarked on the limited authority of the ZBA to grant variance relief from the strict letter of dimensional or other non-use requirements in the Zoning Ordinance, based on specific standards spelled-out in the Zoning Ordinance. He also generally oriented the audience to the customary format of the ZBA for its meetings, including the public hearing segment, and emphasized his primary responsibility as the Township Attorney would be to provide legal guidance towards assuring that any decision made by the ZBA is legally defensible, based on the record of the proceedings.

Finally, the Township Attorney also noted that although the accessory building for which the applicant is requesting variance relief has already been constructed, and has been the subject of enforcement action taken by the Township resulting in a District Court order, the applicant did avail himself of the opportunity to try to address those

violation issues through the presently pending variance application. He indicated the ZBA would generally evaluate the merits of the application, based on the standards specified in the Zoning Ordinance, as if the building had not yet been constructed, but could potentially take note of the existing building in the context of applying one or more of those variance standards.

Chairman Blodgett indicated the item of new business for this meeting was the application of Patrick Joyce for a variance from various requirements of the Schoolcraft Township Zoning Ordinance applicable in the R-1 Medium Density Residential District, to construct a detached accessory building on the lake side of the existing single family dwelling on the premises at 11060 West Higley Circle, Schoolcraft, MI (parcel no. 3914-06-225-040). The applicant has requested variance relief as follows:

- Article 20, footnote 10 limits the size of an accessory building on the lake side of a lake lot to 100 square feet; 288 square feet is proposed.
- Article 20, footnote 11 limits the peak roof height of an accessory building on the lake side of a lake lot to 8' 6"; the applicant is requesting 14'.
- Section 5.4 requires accessory structures on waterfront lots to be located at least 50 feet from the high water line of any waterway or any area determined to be wetland; the proposed location for the accessory building is within 50 feet of a wetland.

All members of the Board indicated they had individually viewed the subject property in preparation for this meeting; except Mr. Blodgett, who stated he was quite familiar with the area.

Chairman Blodgett opened the public hearing for comments by the applicant. Mr. Joyce stated there had been some confusion between him and his contractor regarding getting building permits for the work undertaken on his property, including for the construction of the accessory building at issue. He stated he needs the 12' x 24' building for storage of lake related items, as there is not enough room in the existing two car garage for those storage needs.

Chairman Blodgett clarified the focus of the ZBA in considering a variance application, based on the standards specified in the Zoning Ordinance, and the conditions/circumstances of the property at issue.

Mr. Joyce said he needs the additional roof height to properly address snow load on the roof. Mr. Joyce also stated the building can barely been seen from the road (with the additional roof height).

With respect to the wetland setback issue, Mr. Joyce said the State had told him they would let him back-fill behind the building in the "cattails", and said he had submitted the application to do that but has not yet heard back from the State.

Mr. Joyce said the accessory building does not obstruct any of his neighbor's views. He also said there were 17 existing outbuildings around the lake, including boathouses.

After Mr. Joyce's initial comments Chairman Blodgett opened the public hearing to others. Rich Cook disputed the number of existing outbuildings on lake lots in the plat, as referenced by Mr. Joyce, and also noted that although the plat restrictions do not allow outbuildings, they do allow boathouses. He said the Township has in the past taken enforcement action to remedy ordinance violations in the plat. He also said other residents in the plat make do with their storage needs in the garage or basement. Mr. Cook also stated the slope of Mr. Joyce's property was there when he bought it, and is not unlike the slope of all of the lots around the lake. He noted some people have built storage areas on to the back of their house, as allowed by the plat restrictions, and those storage area additions sometimes involved some site leveling. He urged rejection of the variance request.

Attorney Robert Hencken, representing the Sugar Lake Association, said the Association opposes the variance request. He noted the plat restrictions prohibit all outbuildings. Mr. Hencken stated the size of the building requested by the applicant, 288 square feet, is almost three times the maximum allowed by the Township's zoning rules (100 square feet). He stated there is no evidence the Joyces have storage needs unlike all other lot owners on the lake. Mr. Hencken also stated the purpose of the building is not just for storage, as Mr. Joyce has told other people the second level is a loft for his grandchildren to sleep in when they are visiting. Mr. Hencken also observed the building is actually in the wetland, and stated if the Township is serious about wetland protection the wetland setback variance has to be denied. Mr. Hencken further suggested the plat restriction prohibiting outbuildings is indirectly relevant to the variance standard relating to substantial detriment to adjoining property, as those adjoining property owners are subject to the plat restriction but variance relief could unfairly exempt the Joyce property from that restriction. Mr. Hencken stated the application does not meet any of the variance standards specified in the Zoning Ordinance.

Michelle Clark indicated she is an officer of the Sugar Lake Association. She said Mr. Joyce called her on April 17, 2015, before the building had been built, and told her the then-proposed building would be for his grandchildren to play in, and he intended to do what he wanted to do. She said he had opportunities to request variance relief before he built the building, but decided to go ahead in disregard of the ordinance requirements and the plat restrictions, despite various certified letters sent to him by the Association with respect to the plat restrictions.

Andrew Polishak stated the building is aesthetically attractive, but noted he cannot see the building from his property.

Mrs. Joyce made some comments regarding the letters from and to the Association.

Peter Gustafson expressed a concern regarding the effects of the building on views from the lake, and said the building is not necessarily aesthetically pleasing to all of the residents who can view it from the lake, or from their property.

Mr. Joyce stated the building is not detrimental to the value of his property, and in his opinion actually enhances that value.

Roger Williams said he is a neighbor of the Joyces and doesn't see anything wrong with what was built.

Robert Burghuis said Mr. Joyce knew about the various requirements at issue, but decided to do whatever he wanted to do without any consideration for those requirements, or other places on his property that would be available for an accessory building complying with the Township's requirements.

Chuck Bailey stated he agrees with the comments of Mr. Burghuis.

Mrs. Joyce said that when they bought the property the realtor did not tell them about any problems with Association rules.

Mr. Bailey noted that was well before they built the accessory building.

Deborah Murrey commented that when she bought her property she was informed of the plat restrictions, and also like most people knew she would have to go to the Township to get approvals for any construction projects.

Tim Heckler commented on the intended difficulty in obtaining variance relief, and the importance of doing things the right way.

Mr. Joyce again reiterated all of this was his fault, but he was now just trying to make things right.

Dan Marshall indicated his concern that Mr. Joyce would have any option to eliminate the 50 foot waterfront setback violation issue by simply filling in the wetland area.

Chairman Blodgett noted the ZBA had received and reviewed written comments from Kathleen Cook and Andrew Polishak before the meeting (and Rich Cook also submitted his comments in a written form at the end of the meeting). There being no further public comments, Chairman Blodgett then closed the public hearing.

The Board then began to deliberate and review the request pursuant to the standards for the granting of any variance as specified in Section 28.9.1 of the Zoning

Ordinance, and made various findings with respect to those standards as relevant to the three different ordinance requirements from which variance relief was requested.

With respect to the initial "practical difficulties" standard, Board members observed the subject property was not especially narrow, and in any event the request did not involve any side yard setback variance issues that might typically be associated with a narrow lot. They also observed the subject property has plenty of depth (200 feet), and the open area of about 75 feet between the house and the site of the accessory building did provide an area for an accessory building of compliant size in conformance with the wetland setback requirement. Board members all agreed they did not see any exceptional conditions relating to the subject property that would support finding the "practical difficulties" standard to be met with respect to the building size and height issues, or the wetland setback issue. They noted that even if the applicant would be able to avoid the wetland setback requirement by filling-in some of the wetland area, he still would have a problem with the building size and height issues. Board members stated there are available sites on the property for a compliant accessory building, and concluded the variance relief requested by the applicant was driven by the personal preferences of the applicant, rather than by any extraordinary or exceptional conditions relating to the property itself.

On the second standard, Board members found there were no exceptional conditions applying to the subject property that did not apply generally to other properties throughout the R-1 zone. They also specifically noted the slope of the Joyce property was not unusual as compared to even the part of the R-1 zone consisting of the other lake properties in the Sugar Island Estates plat.

As to the next standard, Mr. Blodgett stated granting the requested variance would not necessarily be of substantial detriment to adjoining property, even though pursuant to the plat restrictions there is no opportunity for any accessory buildings in the plat, because the Zoning Ordinance would allow an otherwise compliant accessory building on the subject property. Mr. Westendorp stated there could be detriment to adjoining property due to the proximity of the building to the wetland area.

On the next standard, Board members referenced the findings on the previous standards to conclude granting the requested variance would not materially impair the public health, safety and welfare, but clearly would materially impair the intent and purpose of the ordinance requirements at issue considering the significant scope of the requested variance relief.

As to the last standard, Board members found the requested variance relief was not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties that are subject to the requirements at issue, because the additional building size and height requested by the applicant is created by the personal preferences of the applicant, and not by any special characteristic of the land itself; and, in addition, the applicant has other storage options to accommodate his

storage needs. Board members also noted the requested relief from the 50 foot wetland setback requirement was not necessary for the preservation and enjoyment of a substantial property right, because an accessory building of compliant size could be built at another location on the property that would comply with the wetland setback requirement.

In the course of the discussion on the last standard the Board received legal guidance from the Township Attorney regarding case law interpreting the term "substantial property right" in such a manner as to not encompass the right to build something according to the property owner's preferred design, and also indicating it is appropriate for a ZBA to consider whether alternatives might be available that negate the need for variance relief. (Risko v. Grand Haven Charter Township Zoning Board of Appeals, June 16, 2009)

The Board also reviewed the additional legal principles specified in Section 28.9.1 of the Zoning Ordinance and determined none of those principles altered any of their previous findings relating to the variance standards (the conditions put forward to justify the variance relief pertain to the personal circumstances of the applicant, and not to the property at issue; the conditions are self-created; etc.).

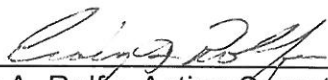
Mr. Hovenkamp indicated he had some empathy for Mr. Joyce's health issues (prior comments from Mr. Joyce had referred to this), but those health issues were not a basis to approve variance relief.

Chairman Blodgett then polled the members to determine if there was a consensus on the five above-discussed variance standards, based on the articulated findings applicable to each standard. Board members all concurred the first, second, fourth, and fifth standards had clearly not been shown to be met, and the third standard was inconclusive. Mr. Blodgett noted the ZBA did not have legal authority to grant any variance relief unless the Board could find that all five of those variance standards specified in Section 28.9.1 were shown to be met.

Based on all the foregoing findings and conclusions, Mr. Steensma made a motion to deny all aspects of the variance application. This motion was supported by Mr. Westendorp, and carried unanimously.

There being no further business to come before the Zoning Board of Appeals, the meeting was adjourned at approximately 8:30 p.m.

Approved: 5-26-16



Craig A. Rolfe, Acting Secretary
Zoning Board of Appeals