

Schoolcraft Township Zoning Board of Appeals
March 1, 2018

A meeting of the Schoolcraft Township Zoning Board of Appeals was held on March 1, 2018, at the Schoolcraft Township Hall beginning at approximately 7:08 PM.

Roll Call

Board Members Present: John Gardner, Terry Blodgett (Chairman), Gary Steensma, Greg Feldmeier

Board Members Absent: Charles Bibart, Ray Hocevar

Also Present: Brett A. Cummings, Township Attorney; Chris Hamilton, Zoning Administrator; Don Ulsh, Township Supervisor.

September 7, 2017 Meeting

Mr. Feldmeier made the motion to approve September 7, 2017 minutes as presented in the packet. It was duly seconded and it passed unanimously as submitted.

**Matter on Appeal – Dennis and Susan Fitzgibbon Variance Application
(15651 S. Portage Rd, Parcel No. 14-27-415-025)**

The home is currently 26' from the road right of way and the applicant desires to tear down the existing home and keep the same 26' setback.

The applicants brought their builder, Tom Scott. Mr. Scott explained the layout of the property and the complications with the soil and dimensions. Mr. Scott had several visual representations with stakes and measurements. He explained that past the existing home about 10 feet or so towards the lake is ridden with "muck" type soil that is not conducive to building. The new structure will be built roughly where the existing structure is, along with an addition that will be approximately 4 feet further back from the front line and extending towards the west.

Mr. Scott asked to amend the request for a 15' variance (or 25 feet setback) instead of a 14' variance (or 26' setback) originally applied for. The reason was that the engineering drawings were not available at the time the application was made and now they have more exact measurements with the drawing.

Mr. Gardner asked whether this was a new structure or an addon. The Zoning Administrator and Mr. Scott explained that it was a new build and tear down of the existing.

The Zoning Administrator asked what the width of the home was. To meet the setback it would need to be flipped completely around and she opined that it isn't feasible without great difficulty.

Mr. Blodgett asked if the drawings showed both parcels owned by the applicant. It did not. The side yards are not at issue, only the roadside.

The Township Attorney read the standards for consideration in finding practical difficulty, then the floor was turned back over to Mr. Scott.

Mr. Scott stated that the exceptional conditions of the property are the presence of large amounts of muck and poor soil. Mr. Scott stated that he has built many homes in this area and never encountered this soil issue. He believes it is a result of the bridge and flow of natural watershed.

Mr. Scott explained that there would be no detriment to neighboring properties because views would not be blocked. Two neighbors were present: Nancy Hyet, Michael Tsilis. Both neighbors supported the project. There was discussion by the members that if the house were moved closer to the lake it would actually block views of some other property owners, whereas granting the variance would be beneficial to neighboring property views.

Mr. Feldmeier inquired of the Zoning Administrator whether they would need to be here requesting a variance if they kept the exact same footprint. The Zoning Administrator explained that it is nonconforming and therefore if it were torn down and built on the exact same footprint, they would still need to be here as nonconforming.

Mr. Scott did not believe the variance affects the health, safety, and welfare of the general public or anyone else.

Mr. Blodgett asked Mr. Scott to show him where the borings were done on the parcel map. Mr. Scott explained where he did several borings.

Mr. Blodgett asked if the current envelope is the only building spot on the parcel. Mr. Gardner cautioned that the soil report indicated that there were special considerations, but special considerations did not make the area "unbuildable."

Mr. Gardner explained the difference between an addition versus a tear down and new build in his consideration. He noted that he struggled with the self-created factor because they are choosing to tear down and build new.

Mr. Scott explained that these properties were all small cottages, and the applicant was dealt a raw hand resulting from the muck conditions of the property.

Mr. Gardner explained that there may be other options, albeit costly, to build in compliance with the zoning ordinance. The board cannot consider costs. For example, a special foundation with pilings could be used.

Mr. Feldmeier countered by stating that moving the house closer to the lake it will interfere with other property owners' rights and sight lines.

There was discussion on the requirements and the fact that it could be built with the soil conditions as-is, but the applicant pointed out that something can become so costly that it is unbuildable.

The Zoning Administrator stated that the ZBA is created for exactly this type of a situation. Is this a postage stamp situation?

Mr. Scott explained that just about anything can be done with enough money, so at some point financial considerations need to be taken with common sense. He stated that a helicopter could be used to hold the home from the air so it didn't sink, but everyone would agree that is not reasonable.

There was discussion on legal nonconforming versus illegal nonconforming. This property is currently legal nonconforming.

Mr. Blodgett explained that 90% of the variances before this board are lakefront requests. He advocated for the planning commission to have a sliding scale on these types of issues, but that is not what currently exists. Instead, the site has to be considered and that's the decision that needs to be made today.

The Zoning Administrator explained that certain upgrades to the existing home can be considered a remodel such that the applicant would still need to be before this ZBA. Things like a new roof or even new siding could, pending a judgment call, necessitate a variance because the property is legal nonconforming.

Mr. Gardner reiterated that this should essentially be looked at as a brand new site since it will be a teardown and rebuild. There is no grandfather clause for teardown and rebuild.

Mr. Blodgett asked what the variance request was again. The Zoning Administrator explained that the ordinance required a 40 foot roadside setback and they are asking to be 25 feet back – a 15 foot variance.

The applicant asked if the Zoning Administrator was going to make a recommendation. She explained that she could not, she represents the zoning book.

Mr. Blodgett moved to close the public hearing. It was closed. He explained that there was a 4 person board today and 3 votes were required for a majority.

The Township Attorney read each of the factors set forth in 28.9(1), and the board discussed each factor as we went. The board found that the muck and soil conditions are exceptional. The board further found that the extraordinary conditions do not apply generally to R1 residential properties. The board next found that the requested variance would not be a substantial detriment to adjoining property. The board also found that the variance will not materially impair the public health, safety, and welfare. Lastly the board found that the variance is necessary for the applicant to enjoy the use of their property.

Mr. Feldmeier motioned to approve the variance with the condition that a turn around be installed for safety so as to prevent the backing up of vehicles onto Portage Road. It was duly seconded and unanimously improved. A 15 foot variance was granted as opposed to the 14 feet originally requested.

Mr. Blodgett made a motion to close the meeting. It was duly seconded and unanimously approved. The meeting adjourned at 8:15 P.M.

Approved: 4-19-18

Terry Blodgett
Terry Blodgett, Chairman
Zoning Board of Appeals