

Schoolcraft Township Zoning Board of Appeals
March 9, 2017

A meeting of the Schoolcraft Township Zoning Board of Appeals was held on March 9, 2017, at the Schoolcraft Township Hall beginning at approximately 7:00 PM.

Roll Call

Board Members Present: John Gardner, Terry Blodgett (Chairman), Charles Bibart

Board Members Absent: Gary Steensma, Jack Westendorp

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

Minutes of November 3, 2016 Meeting

John Gardner made the motion to approve November 3, 2016 minutes. It was duly seconded and it passed unanimously as submitted.

**Matter on Appeal – James Jastifer Variance Application
(1959 East Y Avenue, Parcel No. 3914-26-355-072)**

The applicant stated that the addition to the home is needed for additional room for his family, and the deck addition/renovation is needed to address safety concern for the existing deck. The Chairman has been out to the property and has taken pictures. The applicant intends to offset the roofline away from the wetland in an attempt to keep in the spirit of the current zoning ordinance. The deck addition is needed for safety (no egress currently). He has 3 small children. He has an erosion issue on the walking path near the retaining wall that will benefit from the proposed deck addition by providing an alternative means for access. The deck will only disturb the soil to the extent of the holes dug for posts.

The posts for the deck are roughly 20' from the wetland. The house is somewhere around 33'-37' currently. House was built in 2001 or 2002. The code has not changed since the home was built. There was discussion on whether a variance was sought when the home was originally built. Erosion seems to be largely non-existent at this point as far as the elevation differences between highland, lowland, and wetland. There are areas of lowland that is not wetland.

There was a discussion on if the house was built today what the setbacks would need to be. The southerly side of the house is further away from the wetland than the northerly side. The directions on the application supporting documents are not accurate.

The DEQ has no concerns at this point because they do not have setback requirements according to the applicant and the Zoning Administrator.

Wayne Tamsey, who lives on the east side of the lane leading to the lake, was in attendance questioned the DEQ involvement and thought that they would need to be involved. He claims that a prior owner tried to develop part of the land and was unable to do so as a result of the EPA and DEQ. It sounds like he is also concerned about construction traffic and people coming onto his property without permission. He otherwise didn't seem to have a clear objection to the proposed variance.

There were questions about the soil and erosion permit. The applicant recently built a pole barn and the same permit covers his proposed addition. It requires a silt fence to be installed.

There was a discussion on how measurements were done for determining the wetland boundary. There is a distinct drop in elevation, and natural wetland vegetation (cat tails...etc.). There is a pretty steep hill or raise in elevation towards the home. There has not been any standing water in the lowland.

There were questions as to whether the previous builder could have met the 50' setback. The Zoning Administrator opined that she is not aware of any difficulty in meeting the setback originally when the house was originally built.

No part of the proposal encroaches more than the existing home and deck. The Zoning Administrator agreed, and noted that the deck addition would in-fact allow a step down to the other side of the retaining wall. Concrete construction will not extend further than what it currently is. There was a discussion on currently being grandfathered in. Mr. Gardner strongly supported the idea of egress from the deck. Adding an egress to the non-conforming existing structure would also be in violation of the zoning ordinance requiring the applicant to be in front of the ZBA simply to add stairs.

Mr. Tamsey again raised the issue of the EPA. The Zoning Administrator and the Chairman explained to Mr. Tamsey that it would be the DEQ and DNR, not the EPA. The ZBA board explained to Mr. Tamsey the process for obtaining a variance.

There were discussions about destruction of the existing structure and whether it could be rebuilt with the existing zoning violations. The Zoning Administrator explained that if it were the same footprint and if it were an "act of god" then yes, it could be rebuilt. If it were voluntarily destroyed, then no, it would not be grandfathered and it would have to come into current zoning compliance.

There was discussion on the current physical shape of the deck and the Zoning Administrator confirmed that the deck is in pretty rough shape currently.

Brad Sadowski owns a neighboring property. He spoke out in full support of the applicant and in granting the variance.

The variance would be for the addition to the house and the deck.

There was a motion by the Chairman to close the public hearing that was duly

seconded and passed unanimously.

The Chairman then read the criteria that is necessary to approve or deny a zoning variance request; in sum: 1) Practical difficulty in complying with the ordinance; 2) the special conditions are unique to this property; 3) the variance will not be a detriment to adjoining properties; 4) the variance will not materially impair the ordinance or public health and safety; 5) the variance is necessary for the use and enjoyment of the property.

The applicant acknowledged that he has addressed all of these criteria in his application.

The Chairman found:

- 1) There are shape and extraordinary parcel considerations here, and the house is already too close to the wetlands due to no fault of the applicant. Mr. Bibart opined that it was a well thought out proposal, but it might be lacking the legal specifics. There was a discussion on precedent and the fact that these variances do not necessarily create precedent. Mr. Gardner agreed with the Chairman that practical difficulty was found due to the particular parcel considerations at play here.
- 2) The special conditions unique to this property are the wetland issues and the location of the existing structure.
- 3) You can't see any neighbors from his house, and nobody spoke out against the variance request. There is no detriment found to neighboring properties.
- 4) The variance will improve the safety of his family, and it otherwise will not have adverse effect on the public at large.
- 5) The variance necessary for use and enjoyment of the lake views and property as a whole, and preventing the proposed addition would be a detriment to the applicant's substantial property rights.

The ZBA found consensus on each of the aforementioned factors. The ZBA also reviewed the additional legal principles included in Section 28.9.1 governing whether a determination as to whether the standards for variance relief had been shown to be satisfied, and determined that none of the principles presented any issue here. The circumstances or conditions submitted by the applicant pertain the property at issue and not the personal circumstances of the applicant. The applicant did not cause the issue. Particularly at issue is the safety concerns for the existing deck. The problem was not self-created, and financial considerations are not a basis for the proposed variance relief.

There were discussions on what the addition was for (its intended use). It is to add a bedroom. The Chairman opined that it was the only logical place you could put an addition on the existing home. The Zoning Administrator agreed. If the foundation was brought into compliance it would make the space too small and not usable.

The ZBA has found that all of the conditions have been met. The Zoning Administrator stated that she would like the variance to state that the deck is within so many feet of the wetland. The applicant proposed measuring it from the home or existing structure of

the deck due to the changing nature of wetland measurements. Mr. Bibart stated that the variance is from the wetland setback, so the measurement in the variance needed to be measured based on the existing wetland line. 37' on the southerly side from the normal high wetland mark, and 18' from the northerly side from the normal high wetland mark. It was noted that strict adherence to the permit should be respected and ensure that the silt fences are properly in place throughout the process. Mr. Gardner made a motion, it was seconded and unanimously approved.

Conclusion: Variance Granted

There being no further business to come before the ZBA, the meeting was closed at approximately 8:15 by a motion to close, duly seconded and passed unanimously.

The meeting was adjourned at 8:15pm

Approved: 7-6-2017

Terry Blodgett
Terry Blodgett, Chairman
Zoning Board of Appeals