

MINUTES OF THE SCHOOLCRAFT TOWNSHIP ZONING BOARD OF APPEALS

MEETING ON NOVEMBER 9, 2023

A meeting of the Zoning Board of Appeals of Schoolcraft Township was held on November 9, 2023, located at the Schoolcraft Township Hall, 50 East "VW" Avenue, Vicksburg, Michigan.

Members Present: John Gardner, Jack Westendorp, Terry Blodgett, Ray Hocesvar and Steve Fryling.

Members Absent: None.

Also Present: Gary Walton on behalf of applicants, Applicants Geoff and Linda Clapp; Jim Spurr, attorney; Township Attorney Anne Seurnyck.

Chairman Blodgett called the meeting to order at 7:00 p.m.

Review and Approval of Minutes

A motion was made by Comm. Fryling to approve the minutes of the September 8, 2022 meeting, supported by Comm. Hocesvar. Motion carried 5-0.

Public Comment

None.

Public Hearing on Zoning Variance Request of Geoff and Linda Clapp

The Applicant Geoff Clapp spoke and stated he needed two variances to build the patio at their property located at 14589 Barton Lake Drive. The applicant requested a variance to construct a block patio and retaining walls on the property within the 50-foot-high water mark line setback required in Section 5.4.2 of the Zoning Ordinance. The variance would allow for the patio and retaining wall to be within 20 feet of the high-water line. The variance would also allow the structures to be built adjacent to the side of the of the property within the 10-foot setback. The Applicant submitted letters in support of the variance from neighbors. No neighbor objects, other than Lisa Hardesty, who had concerns with having the two walls next to each other.

Gary Walton, attorney for applicant, spoke about the variance. He stated that the landscape plans originally had a six-foot wall. He referred to the pictures with the application to demonstrate the extremely steep terrain, where you can see a car above the roofline. The property has a steep slope and is a narrow single lot. The newly constructed house takes up most of the lot. They began construction on the retaining walls without Mr. Clapp knowing there would be a problem. The landscaper also did not realize it was a problem. Although he was here today to try to establish that the request meets the standards for a variance, Mr. Walton noted that he could challenge whether there is a variance needed because the neighbors, the Hunters, had a four-foot wall, and no variance was needed.

He described the patio which goes straight out, and there is a retaining wall at the end. A few blocks have already been removed. In addition, there was already a retaining wall on the other

boundary, so they thought it was okay, and the steps down along the side of the house allow for safe passage down.

The need for a variance was based on the steep slope and narrowness of lot. The neighboring house owned by Lisa Hardesty already had a pre-existing retaining wall. When the Clapps' house was renovated, the house was wider and the block retaining wall was a long-term solution to erosion and to accommodate steps. The documents show the retaining wall, steps, and proposed garden placement. A modification had already been agreed upon by the applicant and neighbor to lower the retaining wall 2 blocks (two feet) and the patio would be back 7 feet.

Comm. Fryling asked questions of the Zoning Administrator Chris Hamilton. If they had chosen to do a wooden deck, would that be considered part of the primary structure? Ms. Hamilton stated that the applicants did not submit anything in their original plans for a deck or patio. The assumption was that it would be a flat patio at grade. There was nothing on the plan that showed any kind of deck.

Comm. Gardner asked if the raised patio was part of the same structure. Zoning Administrator Hamilton said that the patio is an extension of the house.

Chad Scott, the Clapps' builder, provided more detail that there is 37 feet from the street to the lake. Flat to grade level does not require a permit but needed 4 feet of fill to get the patio, and therefore required a building permit.

Chairman Blodgett asked about the building permit. Comm. Gardner asked whether there were any thoughts on how to define a raised patio – is it part of the structure? Original plan has the stairs from the first floor down.

The Applicant's attorney discussed the overall height on the side of the retaining wall. It would be approximately two blocks, maybe three. The front is 30 feet out. Then, the wall is two blocks. The patio is not attached to the foundation. Mr. Walton noted that they are trying to address the neighbor's concerns by going from 6 blocks high to 4 blocks. They do not have a bigger lot to work with, although they bought a lot across the street to help with space.

The Zoning Administrator showed the ZBA members the original site plan and noted that they need a building permit. The Zoning Administrator believes the patio is an extension of the house. The stairs on the side were fine because they are grade level, but at the front of the house there is a wall, which is filled in and has a patio on top of it.

Jim Spurr, the attorney for Ms. Hardesty, spoke. He noted that it was important for the ZBA to understand that the Clapps and Ms. Hardesty have reached an agreement. Mr. Spurr was there to fulfill the agreement and wanted the ZBA to understand what was in the agreement. Chair Blodgett stated that the agreement was a civil issue. Mr. Spurr stated that his client objected to the original application, but the ZBA has the power to make a conditional variance. The ZBA can attach conditions. He noted that the neighbors have no objection to the agreement. He requested that if the ZBA approves the variance, the ZBA should approve the terms of the agreement. For example, the slope up the hill and the grades do not match, but the agreement addresses this. With the patio,

they were most concerned about a 6-foot stone wall. Now, there is a much lower wall, a soft area with landscaping, and a much-reduced patio.

Comm. Fryling asked Mr. Spurr if the Township did something his client did not like, whether she would go to court. Yes, potentially; but then discussed the standards for an appeal. Attorney Seurnyck confirmed that the courts would view the record on appeal and not act as a "super zoning board of appeals." Mr. Spurr remarked that the agreement was a compromise on both sides.

Comm. Gardner raised the issue about what would happen if the ZBA did not think that you need the variance. The ZBA members then discussed whether the retaining wall was landscaping and not a structure needing a variance because the patio was not attached to the house. There was continued discussion regarding whether the patio was a "structure" and whether a variance was required.

After significant discussion between the ZBA and the Zoning Administrator, there was no consensus by the ZBA that a variance was required. However, the ZBA needed to discuss the issue with the zoning administrator to determine next steps. The Applicant's attorney asked for a conditional variance request. Attorney Seurnyck did not recommend that the ZBA approve a conditional variance, but instead hold another meeting to address the issues raised in this meeting.

Adjournment

There being no other business, a motion to adjourn the meeting was made by Comm. Fryling, seconded by Comm. Hovevar. Motion carried 5-0.

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Date: 1/25/24

Signed: T. W. Bledsoe