

ISABELLA COUNTY
ZONING BOARD OF APPEALS

July 18, 2018

A Regular Meeting of the Isabella County Zoning Board of Appeals was held on July 18, 2018 in Room 320 of the Isabella County Building, 200 North Main Street, Mt. Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Phillip Vogel, Brent Duffett, Tom Riley

MEMBERS ABSENT: Marilyn Fosburg

SUPPORT STAFF PRESENT: Tim Nieporte, Director
Ray Johnson, Planner/ Zoning Administrator
Kim Kennedy, Recording Secretary

The meeting was called to order by the Chair at 9:00 a.m.

The Pledge of Allegiance was recited by the Board.

APPROVAL OF AGENDA

A motion was made by Mr. Riley supported by Mr. Vogel to approve the agenda.

Yes: Jim Wynes, Phillip Vogel, Brent Duffett, Tom Riley
No: None

Motion carried.

PREVIOUS MINUTES

Minutes from the May 2018 regular meeting were circulated to the Board prior to the meeting for their review.

A motion was made by Mr. Duffett and supported Mr. Vogel by to approve the minutes as presented.

Yes: Jim Wynes, Phillip Vogel, Brent Duffett, Tom Riley
No: None

Motion carried.

PUBLIC COMMENT – None

VAR#18-05 – Brad Fussman, Nottawa Township

Mr. Johnson reported that an application was received from Brad Fussman. The property is located on the west shoreline of Coldwater Lake. The applicant is requesting a variance to construct a deck on a waterfront lot with side yard setbacks of 6 ft and 1 ft where 8 ft is required and a rear yard setback of 24 ft where 35 ft is required.

The applicant is also requesting a variance to construct a garage addition on a non-waterfront lot (back lot) with side yard setbacks of 5 ft and 6 ft where 8 ft is required, a front yard setback of 18 ft where 20 ft is required, a building size of 1,488 sq ft where 864 sq ft is the maximum permitted, and a lot coverage of 42.5% where 10% is the maximum permitted.

Mr. Johnson indicated there are two site plans in the application and staff has highlighted the requested variances on the applications. Mr. Johnson informed the board that Mr. Fussman had purchased the home and adjacent lot in 2014 with an existing home, deck on the waterfront lot and garage on the back-lot. Mr. Fussman did remove the deck on the existing home and reconstructed it before this hearing and without obtaining permits. Mr. Johnson reminded the board that they should be reviewing the application as if the deck had not already been constructed.

As per Mr. Fussman's application the deck on the south side is 4 ft wide where the previous deck was 5 ft wide. Mr. Johnson also noted that there is a door into the home on this side and as per building code a minimal of 4 ft landing is required at an entrance. Also shown on the site plan is the proposal for the deck between the home and the water. The applicant states the deck will not obstruct the views of the neighboring homes because it will not have railings. Mr. Johnson reminded the board that it is up to the state building code to determine if railings are necessary and the building official will determine if railings are required.

Staff did some analysis using the GIS and determined that other homes in the area have rear yard setbacks from about 15-35 ft. Also as per the application there is a 6ft setback request on the north side of the property. The deck on this side is in line with the existing home.

Mr Johnson explained that Mr. Fussman is requesting an addition to the current structure the non-water front lot. This request is for an 18 ft front yard setback where 20 ft is required and side yard setbacks of 5 ft and 6 ft where 8 ft is required. The site plan depicts 18 ft of driveway for a vehicle to back out of the proposed garage prior to entering the road way.

If granted the total size of the structure would be 1,488 sq ft where 864 sq ft is the maximum permitted on a non-water front lot without a home on the property. Lot coverage maximum in the ordinance is 10 %. If granted the addition the coverage would be 42.5%. The current structure puts the lot coverage at 21.9 %.

Staff again used the GIS to analyze non water front lot accessory buildings along W. Shore Dr. and found that 65% of them are smaller than 864 sqft with the largest being approximately 1,400 sqft.

Staff would recommend that each request be addressed individually beginning with the waterfront lot since there are a total of 8 variance requests on this application. Staff would also recommend a soil erosion permit be required if there is an approval to the requests.

Mr. Johnson stated that 3 letters were received by residents in the area. All three letters were in opposition of this variance.

Mr. Nieporte reviewed the timeline for this variance. Before the June meeting staff realized a few errors in the public hearing notice. Staff spoke to applicant and he agreed to postpone his request until the July meeting. Staff cancelled the June meeting and sent cancellation notices to all neighbors previously notified of the meeting.

Staff received a survey by the neighbor to the south via email. This email stated the deck as it is currently built is encroaching on her property. This email prompted staff to visit the site and confirm the measurements on the application. Staff found that the deck was not encroaching on the neighbor's property however many of staffs measurements were different than the measurements on the application. Staff contacted Mr. Fussman about these differences. Mr. Fussman stated he would address the discrepancies to the board at the meeting.

Mr. Wynes invited Mr. Fussman to come forward and address the board. The Chair asked for the applicant to provide any additional information he wished. The chair informed the applicant that this was his time to speak and unless he is asked questions by the board, his time for comment will be over.

Mr. Wynes asked if the applicant understood.

Mr. Fussman stated he understood.

Mr. Fussman explained that this was an existing deck and that the project began with replacing a few deck boards however he found rot in the supports so had to replace posts. This was the original deck was constructed in the 1970's. He stated he reduced the width of the deck on the south side and admits he should have gotten permits prior to construction. Mr. Fussman informed the board in regards to the non-waterfront lot building addition, that he owns the land behind this lot and has combined them into one parcel and states the percentages are now all different.

Mr. Nieporte explained to the board that if this is correct then the applicant would not need a variance on the non-waterfront lot garage addition for the lot coverage requirement. But that would be up to the applicate to remove that portion of the request.

Mr. Nieporte asked if there was a right of way behind his property.

Mr. Fussman stated the properties are connected without a right of way running through them.

The Chair asked for clarification on the additional property.

Mr. Nieporte clarified the location of the additional property.

Mr. Fussman stated he is in need of storage and would like to move forward with the request.

Public Hearing Opened at 9:23 a.m.

Paul Weber spoke in favor of the request and the property improvements. He spoke about the small lots and limited storage availability.

Closed Public Hearing 9:26 a.m.

Mr. Nieporte reviewed site plan measurements taken by staff also reiterating that the board should take action as if the deck is not there. Mr. Nieporte began with the deck as constructed measuring 18 ft to the high water mark. The applicant is requesting 24 ft to the high water mark. If approved, he would have to remove 6 ft of the current deck. The errors in the actual measurements in the application create problems for the applicant not the board because the deck should not be there.

Mr. Nieporte stated that the south side property line the applicant stated the setback was 1 ft. When measured by staff, the deck is currently at 4 inches and does not appear to encroach on the neighbor's property.

Mr. Vogel inquired if the stakes used for measurement were survey stakes.

Mr. Nieporte stated yes it was a new survey done by the neighbor to the south.

Mr. Nieporte stated that if the board grants a variance of 1 ft the applicant will have to remove 8 inches of deck in that corner and wouldn't be able to expand beyond 1 ft to the property line. Mr. Nieporte also stated the deck measures 4 ft 9 inches which is ok but the width could potentially change given his 1 ft setback request.

Mr. Nieporte recommend discussing the water side setback first and then taking action upon it with a vote.

Mr. Riley asked for clarification of the 24 ft rear yard setback.

Mr. Nieporte clarified the request and the impact to the existing deck.

Discussion between the applicant and Mr. Nieporte about the ordinary high water mark and steps being not included in the setback.

Mr. Nieporte reiterated to the board that the action is for the deck to be 24 ft from the high water mark and restated the impact to the currently constructed deck.

Mr. Duffett commented on the deck would affect the view of the neighbors, and is closer than the neighbors. Mr. Duffett stated that if hand rails are required by the building code, these would impede the view and would be detrimental to the neighbors.

Discussion between Mr. Nieporte and the application about this time being board discussion not public comment.

Board discussion about the impact to the existing deck if the rear yard setback is approved.

A motion was made by Mr. Duffett, supported by Mr. Vogel to deny 24 ft set back on the rear yard.

Mr. Wynes called for a roll call vote.

Tom Riley: Yes
Phillip Vogel: Yes
Brent Duffett: Yes
Jim Wynes: Yes

Motion carried.

Mr. Nieporte stated the board can still take action on the 1 ft south side set back.

Mr. Duffett asked how the board can make an approval when measurements are not accurate and stated the south deck would not negatively impact the neighbor.

Board discussion about difference in measurements took place and the impact to the deck.

Mr. Nieporte stated the requested variance is for a 1 ft side yard setback and the board needs to take action on this request.

Mr. Wynes expressed concerns about the 1 ft set back being an excessive difference between the ordinance requirement and the request and the impact to the intent of the ordinance.

A motion was made by Mr. Vogel to deny the 1 ft setback request on the south side. Motion dies from lack of support.

A motion was made by Mr. Duffett supported by Mr. Riley to approve the 1 ft setback request on the south side.

Mr. Wynes called for a roll call vote.

Tom Riley: Yes
Philip Vogel: No
Brent Duffett: Yes

Jim Wynes: No

Mr. Nieporte stated that because of a tie vote the action is a denial.

Mr. Nieporte reviewed the north side variance request at for a 6 ft setback where 8 ft is required and the impact to the deck on the north side of the property.

Mr. Duffett asked for clarification on the variance request.

Mr. Nieporte clarified the deck has a current side yard setback to the north property line and this request is for that 6 ft side yard setback.

A motion was made by Mr. Riley supported by Mr. Vogel to approve the north side set back of 6 ft where 8 ft is required.

Mr. Wynes called for a roll call vote.

Tom Riley: Yes

Philip Vogel: Yes

Brent Duffett: Yes

Jim Wynes: Yes

Motion carried.

Mr. Nieporte clarified that the variance request for the rear yard and south side yard were denied so the applicant must meet ordinance requirements for these yards.

Mr. Nieporte reviewed the 5 requests on the non-water lot. He stated the board should discuss if they want to take into account the additional lot Mr. Fussman stated he now owns. Staff performed the calculation and determined the variance for the lot coverage would not be needed if he does indeed own the additional lot. Following the hearing, Mr. Fussman would have to provide additional documentation of ownership.

Mr. Duffett discussed front yard setback and the distance to the road. He expressed concerns about a vehicle backing out of the garage and being detrimental to surrounding properties. He stated he feels it is very large building and not consistent with the neighborhood.

Mr. Nieporte reviewed the setbacks that staff measured for the current building stating that the south measurement for the existing garage is only 3 ft 6 inches not the 5 ft as shown on the site plan.

The board discussed the current setbacks to the existing garage.

Mr. Riley asked for clarification on the distance of the existing building to the right of way.

Mr. Nieporte indicated the applicant's and staff's measurements to the right of way are consistent.

The board discussed the front yard setback variance request.

Mr. Nieporte advised the board to address the variance requests separately beginning with the 1,488 sqft request which would determine if the rest of the variance requests are needed.

A motion was made by Mr. Duffett supported by Mr. Vogel to deny the size of the structure to be 1,488 sq ft where 864 sq ft is the maximum permitted on a non-water front lot without a home based on the size being detrimental to the surrounding neighborhood.

Mr. Wynes called for a roll call vote.

Tom Riley: No
Phillip Vogel: Yes
Brent Duffett: Yes
Jim Wynes: Yes

Motion carried.

Mr. Nieporte clarified that the remaining requests for the non-water lot would be a systematical denial being the sqft request was not approved.

A motion was made by Mr. Duffett supported by Mr. Vogel to deny the request for a front yard setback of 18 ft where 20 ft is required and side yard setbacks of 5 ft and 6 ft where 8 ft is required based on the fact that he cannot expand to the size requested and the measurements as provided.

Mr. Wynes called for a roll call vote.

Tom Riley: Yes
Phillip Vogel: Yes
Brent Duffett: Yes
Jim Wynes: Yes

Motion carried.

Mr. Nieporte reviewed the variances that were denied and the only variance approved was on the north property line of the water front lot.

STAFF COMMENTS – none

APPEALS BOARD MEMBER COMMENTS –

Mr. Duffett commented that there was a lot to take in on this last variance. He questioned if there should have been separate applications.

Mr. Nieporte stated that it was one application with 8 different variances.

Mr. Vogel asked if surveys could be wrong.

Mr. Nieporte stated there is no requirement for an applicant to provide a survey and that two disagreeing surveys become a civil matter and typically a court determines where a property line is.

ADJOURNMENT

Motion to adjourn the meeting by Mr. Duffett, supported by Mr. Riley. Meeting was adjourn at 10:00 am.



Brent Duffett, Secretary
Kim Kennedy, Recording Secretary