

# CHESTER TOWNSHIP ZONING BOARD OF APPEALS MINUTES

## Meeting of January 5, 2021

Meeting held remotely via the Zoom platform. All Board members were located in Chester Township.

Meeting called to order at 7:00 p.m. by Chairperson Wurm

Other members present remotely: Jon Denhof, Mike Dunnuck, Marilee Herremans, Ross Lieffers.

Members absent: None.

Planning Administrator Julie Lovelace and Attorney Cliff Bloom were also present.

Oath of Office was given to Denhof, Herremans, Lieffers and Wurm.

**Agenda Approval**- Motion by Denhof to approve the agenda. Seconded by Lieffers. Roll-call vote was taken. The motion carries by unanimous roll-call vote.

**Minutes Approval**- Minutes from the ZBA meeting of June, 29, 2020-Motion by Lieffers, seconded by Dunnuck. The motion carries by unanimous roll-call vote.

**Citizen comment for Items not on the Agenda**- None.

### **Public Hearing**

#### **A. Rollenhagen Variance**

The request is for a non-use variance to construct a 144 square foot addition to an existing lawful nonconforming accessory building which currently has a front yard of approximately 15 feet where 40 feet is required. The restriction on enlarging or altering a lawful nonconforming structure is detailed in Section 301A1 of the Chester Township Zoning Ordinance. The premises are located at 2833 Crockery Shores Road, Casnovia, Michigan 49318 (parcel #70-01-16-200-037, zoned lake residential (LR)).

The application and staff memo were reviewed and discussed with input from Lovelace and Bloom.

Motion by Wurm to open the Public Hearing. Seconded by Dunnuck. The motion carries with a unanimous roll-call vote.

Lovelace gave a summary of the variance request.

Mr. Rollenhagen declined comment.

Mr. Carl Elliot of 2532 Crockery Shores voiced his support of the variance request.

There was no further public comment. Motion by Denhof to close the public hearing. Seconded by Lieffers. The motion passes with a unanimous roll-call vote.

The Zoning Board of Appeals members reviewed the standards to be met for a non-use variance to be granted:

1. *There are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.*

The Zoning Board of Appeals agrees that the building is an accessory building that was constructed prior to the requirements of the current Zoning Ordinance. However, within the Lake Residential zoning district, there are a number of existing lawful nonconforming structures. The Zoning Ordinance does provide several exceptions within Section 301A2 to address these nonconformities; however, accessory buildings are not addressed. Given the other nonconformities within the Lake Residential zoning district, as well as the existing provisions of the Ordinance to address lawful nonconforming structures, Staff does not find that there are extraordinary conditions that apply to the subject property. The ZBA agrees that this standard has not been met.

2. *That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.*

The Zoning Board of Appeals empathizes with the applicant that the proposed addition does not change the nonconforming front yard setback. However, the proposed addition does increase the degree of nonconformity of the building, as defined in Section 301A1 of the Zoning Ordinance. Given that the property is over 2 acres in size and there is ample space to construct a second accessory building for storage (that complies with all setbacks), the ZBA does not believe that a variance is necessary for the preservation and enjoyment of a substantial property right. The ZBA agrees that this standard has not been met.

3. *That the authorizing of such a variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this Ordinance or the public interest.*

The Zoning Board of Appeals agrees with the applicant that the proposed 144 square foot addition would not be of substantial detriment to adjacent properties. However, the purpose of the Chester Township Zoning Ordinance is “to establish regulations and zoning districts throughout the unincorporated portions of the Township within which the use of land, the use, size, type, and location of structures, and the use of natural resources are regulated to promote the health, safety, and general welfare of the public and of the Township.” Granting a variance to increase the area or size of a non-conforming accessory building does impair the purpose of the Zoning Ordinance. While it is unfortunate that the existing accessory building on the property is non-conforming, the ZBA does not believe that it follows the intent of the Ordinance to grant a variance to increase the area or size of the non-conforming structure.

The ZBA agrees this standard has not been met.

4. *That the situation is not due to a self-created hardship.*

As noted previously, the ZBA empathizes with the applicant that the proposed addition does not affect the area of the accessory building that is non-conforming (the front yard setback). However, as aforementioned, there is ample area on the property to construct an additional accessory building for storage. As such, an addition to the existing non-conforming accessory building is a self-created hardship.

The ZBA agrees that this standard likely is not met.

5. *For a use variance, that compliance with the Ordinance would cause undue or unnecessary hardship. For a non-use variance, that there are practical difficulties in complying with the Ordinance.*

Given that there is ample area on the property to construct an additional accessory building for storage, the ZBA is unaware of any practical difficulties in complying with the Zoning Ordinance.

The ZBA agrees that this standard has not been met.

There was Board member discussion concerning the request and the standards. The consensus was to look into future zoning changes which would start at the Planning Commission level. The ZBA could recommend that the Planning Commission look at the current set-backs and address them accordingly. Specifically, the Planning Commission could look at whether expansions of a lawfully nonconforming building or structure would be allowed so long as none of the expanded portion of the structure or item is located within any required set-back area.

Wurm moved to deny the application while incorporating / adopting the findings in the Zoning Administrator's written report. Lieffers seconded. The motion to deny then passed by a unanimous roll-call vote.

### **B. Basil Variance.**

Attorney Bloom explained that with the turnover of Zoning Administrators, it was discovered that there is a procedural error with this request. Specifically, the applicant did not file for a general variance, but rather, applied under subsection ~~302C2301C2~~ of the Zoning Ordinance regarding lawful nonconforming structures on lawful nonconforming lots. The Zoning Administrator never had the chance to formally determine whether subsection ~~302C2301C2~~ applies, and if so, whether the standards would be met to allow the applicant to expand the building without requiring a variance. Accordingly, attorney Bloom believes that the ZBA is without jurisdiction tonight regarding this case and that the matter should be remanded to the Zoning Administrator to determine whether subsection ~~302C2301C2~~ of the Zoning Ordinance applies, and if so, whether the standards would be met to allow the applicant to expand the dwelling (i.e. remove the existing porch and add a house addition) without the need for a variance.

Motion by Denhof to remand the Basil request for a non-use variance back to the Zoning Administrator. The Township will waive any additional fees. Seconded by Wurm. Unanimous roll-call vote in the affirmative.

### **Organizational Meeting:**

Motion by Denhof, seconded by Lieffers to nominate Wurm as Chairperson. The motion carries by unanimous roll-call vote.

Motion by Denhof, seconded by Lieffers to nominate Herreman as the Vice-Chair person. The motion carries by unanimous roll-call vote.

Motion by Dunnuck to adjourn the meeting at 7:57p.m. Unanimous roll-call vote to adjourn.