

# CHESTER TOWNSHIP ZONING BOARD OF APPEALS MINUTES

## Meeting of February 24, 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, Marilee Herremans, Ross Lieffers and alternate Dave Swanson.

Members absent: Dunnuck

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

Members of the public: Sawyer Rozgowski, Michael Basil, Phil Schaefer

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

**Minutes Approval**- Minutes from the ZBA meeting of January 5, 2021-Motion by Lieffers, seconded by Swanson. Corrections were noted. The motion carries by unanimous roll-call vote.

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

### **Public Hearing**

#### **Basil Variance**

The request is for a non-use variance to construct a 390-~~490~~ square foot addition to an existing nonconforming house, which currently has a side yard of approximately 19 feet where 40 feet is required. The restriction on enlarging or altering a nonconforming structure is detailed in section 301.A.1 of the Chester Township Zoning Ordinance. The land and premises are located at 3485 Truman Street, Conklin MI 49403 (Parcel #70-01-05-400-027, zoned as Agricultural (A)).

The application and staff memo were reviewed and discussed with input from Lovelace and Bloom. Lovelace commented that this parcel is located in the agricultural district and has a residential use. Thus 301.C.2 does not apply.

Attorney Bloom said that this case is a close call and that Attorney Rozgowski did a good job in his February 17<sup>th</sup> letter to the board. He then advised that where there is an ambiguity in a municipal zoning ordinance, the ambiguity must generally be construed in favor of the property owner.

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

Lovelace gave a summary of the variance request.

Motion by Denhof to close the public hearing. Seconded by Lieffers. The motion passes with a unanimous roll-call vote.

The appeal of the Zoning Administrator's decision/interpretation of 301.C.2.

Zoning Administrator Julie Lovelace reviewed her interpretation of the Zoning Ordinance. Mr. Bloom summarized the Townships interpretation of Section 301.C.2 of the Zoning Ordinance.

Mr. Rozgowski, attorney for the Basils, presented his case for rejecting the ZA interpretation of the request. The home is in the Ag district, but it is a residential use. If provision 301.C.2 were to be applied to this parcel, the Basils meet all site plan requirements.

Motion by Denhof to uphold the Zoning Administrators interpretation of 301.C.2 based upon the Zoning Administrators four-page written document. Second by Herremans.

Role call vote: Denhof yes, Herremans no, Lieffers yes, Swanson yes, Wurm no. Motion passes.

The Zoning Board of Appeals members then 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 applicant points to the nonconforming size of the parcel in the Agricultural district and its irregular shape. Additionally, the applicant points to the fact that construction of the home itself predates the current ordinance requirements.

**Staff comments:** Given that the Agricultural zoning district has the greatest minimum parcel size and setback requirements in Chester Township, coupled with the age of many of the structures in the zoning district, staff finds that non-conforming structures and parcels do apply generally to a number of properties in the same zoning district. For instance, there is a structure to the east between 3439 and 3425 Truman Street that exists over the dividing property line. As such, Staff does not believe that exceptional or extraordinary circumstances or conditions apply generally to the subject property that do not apply generally to other properties in the Agricultural zoning district. If the ZBA agrees, this standard has not been met.

**Attorney Rozgowski comments:** The home is non-conforming. The home pre-dates the ordinance and even Chester Township. The increase is to the north not the east, which continues the non-conformity, it does not increase it. The home can never be expanded which is an extraordinary circumstance.

The ZBA agrees that this standard has 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 applicant states that most other properties in the area are a typical, consistent shape with enough width to comply with the setback requirements.

**Staff comments:** Based upon Section 301.A of the Zoning Ordinance, the applicants are aware that they would be permitted to reconstruct the existing 40 ~~20~~ ft x 21.5 ft porch without a variance. Given that there is an existing residence on the property, and an existing porch that would be permitted to be reconstructed, Staff does not believe that a variance is necessary for the preservation and enjoyment of a substantial property right. If the ZBA agrees, this standard has not been met.

**Attorney Rozgowski comments:** Other properties in the township can expand and change. To increase the value of the property the right to variance is necessary. The homeowner should be able to improve the property.

The ZBA agrees that this standard has been met.

3. *That the authorizing of such 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 applicant states that neighboring properties have been consulted and appear to have no objection to the addition. Further, the proposed addition will not encroach any closer upon the east lot line than the existing porch does now. The applicant points to section 301.C for relief from the setbacks. As stated in the Background, this provision does not apply to Agriculturally-zoned properties.

**Staff comments:** Staff does agree that the proposed addition may not be of substantial detriment to the adjacent property. 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 non-conforming area of a residence does impair the purpose of the Zoning Ordinance. While it is unfortunate that the existing residence on the property is non-conforming, Staff does not believe that it follows that the intent of the Ordinance is to grant a variance. If the ZBA agrees, this standard has not been met.

**Attorney Rozgowski comments:** Granting of the variance promotes health and safety of the residents. The old addition is in dis-repair and needs to be replaced. This would promote welfare of the public by increasing the property value. This will revitalize a historic home in the community.

The ZBA agrees that this standard has been met.

4. *That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonable practicable the formulation of a general regulation for such conditions or situation.*

The applicant states “the situation and injury of the parcel is individualized and implicates only the parcel.”

**Staff comments:** As noted in item (b), based on Section 301.A.1 of the Zoning Ordinance, the applicants are aware that they would be permitted to reconstruct the existing 10 ~~20~~ ft x 21.5 ft porch without a zoning variance. As such, it appears that a general regulation has already been created to address non-conforming structures. If the ZBA agrees, this standard has not been met.

**Attorney Rozgowski comments:** Basils thought that 301.C.2 did apply to their property. As 301.C.2 does not apply there is not a general regulation that addresses the situation. Thus a variance must be sought.

The ZBA agrees that this standard has been met.

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

The applicant asserts that this situation was not self-created, as the home was built well prior to current zoning regulations.

**Staff comments:** As noted in items (b) and (d), based upon Section 301.A of the Zoning Ordinance, the applicants are aware that they would be permitted to reconstruct the existing ~~40~~ 20 ft x 21.5 ft porch without a zoning variance. Expanding the porch area and creating a house addition is merely a desire of the applicants and a self-created hardship. If the ZBA agrees, this standard has not been met.

The ZBA agrees that this standard has been met.

6. *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*

The applicant states that moving the home or demolishing and rebuilding to meet the current setback requirements is impractical. The applicant points to section 301.C for relief from the setbacks.

**Staff Comments:** As stated in the Background section above, provision 301.C does not apply to Agriculturally-zoned properties. Given that Staff has informed the applicants that they would be permitted to reconstruct the existing porch without a zoning variance, Staff finds that there are not practical difficulties in complying with the Zoning Ordinance. If the ZBA agrees, this standard has not been met.

**Attorney Rozgowski comments:** The hardship is due to the age of the home. It was built before there was a limit on where you could build. Thus this is a true hardship.

The ZBA agrees that this standard has been met.

Denhof moved to close the public hearing. Second by Herremans. Roll-call vote was taken. The motion carries by unanimous roll-call vote.

There was board member discussion concerning the request. ~~Motion by Herremans to approve the variance request, incorporating the applicants' application.~~ Motion to approve the dimensional variance request to build a 20'x21.5' (430 square foot) addition onto the north side of the existing dwelling, per the building plans submitted with the application, with a 19-foot side yard (east) setback. ~~The Applicant must maintain a minimum of 10' between the addition and the existing garage.~~ Second by Lieffers. Role call vote:

Denhof yes, Herremans yes, Leiffers yes, Swanson, yes, Wurm yes. The variance is unanimously approved.

Motion by Herremans to adjourn the meeting at 8:40p.m. Unanimous roll-call vote to adjourn.

Respectfully submitted,

Helen Dietrich, Chester Township Clerk