

YANKEE SPRINGS TOWNSHIP
ZONING BOARD OF APPEALS
MEETING

Tuesday, October 8, 2019
7:00 PM
Yankee Springs Township Hall
284 North Briggs Road, Middleville, Michigan 49333

MINUTES
Page 1 of 6
ZBA
10/8/19

MINUTES

Meeting called to order at 7:00 PM by Jake Welch, Chairman.

Roll Call: Present: Jacob Welch, Dave VanHouten (Vice Chair), Ron Heilman- Secretary, John Frigmanski, Jim Courtney (Alternate), Pat Jansens- PC Rep.

PLEDGE OF ALLEGIANCE –

Present: Rebecca Harvey, Professional Planner

Also Present: Eric Thompson- PCI, YS Zoning Administrator

Staff Present: Sandy Marcukaitis, Chuck Biggs- Constable, Frank Fiala

Visitors: 18 - not including staff present.

CALL TO ORDER

ROLL CALL

PLEDGE

REPORTS FROM REPRESENTATIVES:

Planning Commission: Pat Jansens commented that there was nothing to report at this time.

Board of Trustees: There is not a Trustee representative from the Board as of this time.

REPORTS FROM
REPRESENTATIVES

APPROVAL OF MINUTES:

Motion by Heilman with support from Frigmanski to approve ZBA meeting minutes of July 9, 2019 as presented. All ayes. MOTION CARRIED.

APPROVAL OF
MINUTES:

PUBLIC COMMENT: NONE

PUBLIC COMMENT

NEW BUSINESS:

ZBA 19-09-09 Parcel ID 065-013-00 A request by Tom Hopkins of 10910 Shady Lane, for a variance to construct a single family dwelling failing to meet the front yard setback.

Motion to Open Public Hearing by R. Heilman with support from D. VanHouten at 7:03 p.m. All Ayes. MOTION CARRIED.

Mr. Hopkins presented his request – noting that neighbor’s setback (to the east) skews the average. Hopkins commented he would be basically building on same footprint with porch with a roof. Hopkins also commented it (proposed building) would fit on lot correctly. The variance, if granted, would keep them from bringing a huge juniper tree down, which they would keep for aesthetic value and shade. Hopkins noted that parking is a problem. It’s a big inconvenience and it would not do much for the neighborhood to be back to the edge of the road. T. Hopkins mentioned that the neighbors to the East sent a letter which noted they are not having an issue with it (proposed project). Hopkins also noted that the garage will be taken out. They would like to leave the garage intact while building for storage, but it has to go- per builder.

ZBA 19-09-09 Parcel
ID 065-013-00 A
request by Tom
Hopkins of 10910
Shady Lane

Comments from audience:

Cathy Woodrow, 10968 Shady Lane, commented on the average front yard setback –if throwing out the “Towns” (a neighboring home)- it would be 61’ feet back.

Vernon Becker, 10844 Shady Lane, commented on leapfrogging ahead toward the shore diminishing the beauty of the lake. V. Becker commented that a lot of work went into the regulations (ordinance) and he thinks they should be adhered to. Mr. Becker did not feel there was a crisis with the building, and commented that the minute one moves ahead, even if it’s a foot, he felt it was wrong.

Motion to Close Public Hearing by Heilman with support from Frigmanski at 7:17 p.m.
All Ayes. MOTION CARRIED.

CORRESPONDENCE read into minutes by ZBA Chair, Jake Welch:

Letter in favor of the project. Letter dated 9/28/19: Setback doesn’t obstruct their view which is to the north and west. Letter from: 10922 Shady Lane Brian and Amy Echtenaw and Kosinski’s (Letter addressed to: T. Hopkins).

Also two letters came to the ZBA: Not in favor of Project. Neighbor(s) don’t believe there’s a hardship and that lot was not a unique or odd-shaped lot. Damaging to property value was noted as well. Jonathon Ehrlich 10876 Shady Lane and second letter from Katherine Ehrlich, also of 10876 Shady Lane.

J. Welch read the Practical Difficulty Test. (Test provided by R. Harvey, Professional Planner)

Practical Difficulty Test

1. That the practical difficulty asserted by the applicant by way of justification for a variance is due to unique circumstances of the property. (exceptional or extraordinary physical circumstances applying to the property that do not apply generally to other properties in the area/zoning district).
2. That the condition of the property is not of so general or recurrent a nature as to make reasonable the formulation of a regulation for such condition. (An amendment of the zoning ordinance instead of variance relief).
3. A literal interpretation of the provision of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary. (Preservation of a substantial property right similar to that possessed by other properties in the district/vicinity).
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. That, in granting a variance, the ZBA is insuring that the spirit of the Zoning ordinance is observed, public safety secured, and substantial justice done. (not impair the intent and purpose of the Ordinance).

6. That the practical difficulty asserted by way of justification for the variance is not self-created. (Created by any affirmative action of the applicant).

The ZBA reviewed the six standards of the Practical Difficulty test in relation to the variance request(s) this evening.

Motion by Heilman with support from Frigmanski to deny 43 ft. variance requested and allow a conditional change to 55' (average with exception of 125' lot) which gives preservation and enjoyment of his property, he won't be further back than the rest of them (73' ordinance). It will take care of the intent of the ordinance. The spirit of ordinance is not affected. There is nothing extraordinary about lot that wouldn't allow him to move back to the 55 ft. Roll Call Vote: Frigmanski: Yes, Welch: Yes, Heilman: Yes, VanHouten: No, Jansens: No. Yes: 3, No: 2. MOTION CARRIED.

MINUTES
Page 3 of 6
ZBA
10/8/19

2. ZBA 19-09-10 Parcel ID 070-058-00 A request by Shashin Kothawala of 3088 Elmwood Beach for a variance to construct a single family dwelling failing to meet the front yard setback.

ZBA 19-09-10 Parcel ID 070-058-00 A request by Shashin Kothawala of 3088 Elmwood Beach

Motion by Heilman with support from Welch to open public hearing at 7:38 p.m. All ayes. MOTION CARRIED.

Legal counsel, Blake Crocker – representing Mr. Kothawala, presented the variance request. B. Crocker noted that preliminary work was done, when E. Thompson removed the building permit. B. Crocker noted the unique shape of property – (triangular shape with a little knob on the end.) Lot is at the end of the lane. It has two sides on the lake. Not of a recurrent nature-per B. Crocker. Crocker commented that Kothawala's home is covering about 16%, the ordinance permits 50%. S. Kothawala is taking down a garage. Crocker commented that it was probably more of an efficient design than what is presently on the lot. Site plan meets the 25 ft. setback. Crocker commented that the home is not significantly detrimental to adjacent properties. Crocker noted that the township doesn't have an ordinance noting what is permissible for viewshed. Crocker commented that half of the houses, of four (4) in the 150', are setback "50 something" (feet) and half are "30 something"(feet). New design creates less parking congestion. Neighbor to east has signed a letter of agreement with the project per Crocker. Crocker also addressed the spirit of the ordinance (5th Standard of Practical Difficulty test), as well as the 6th standard "being self-created" or not.

It was noted that on August 4, 2019 – permit was issued. Per S. Kothawala: They had stripped their house, trees were removed, utilities were contacted for shut off, and Habitat Humanity was scheduled to come. Permit was than removed.

Comments from Audience:

Lisa Pishevar of 3104 Elmwood Beach– two (2) properties to the south of Mr. Kothawala's property – disagreed with the lawyer's statement, "One house to the south is not impacted". "Every single house to the south is impacted," commented Pishevar. L. Pishevar commented that she had been at her residence for six (6) years, and at some point a sunroom was added to Mr. Kothawala's home. Pishevar commented that when she stands in her front yard and looks down

at the peninsula she can look thru S. Kothawala's two sliders and can see the lake. She spoke of a different point of water view blocked by the home. Pischevar noted that they paid extra money to be on an end of a peninsula, with the potential for a 180 (degree) or maybe 220-245 (degree) view. "Any foot extended this way is a foot off my view from my property," commented Pischevar. "To say that it doesn't affect the view of people from the south -is just not accurate." Neighbor to the south could not be present this evening due to illness per Pischevar. "If this (variance) is granted, you bet ...I'm putting a porch on my house. I have full glass; no shade.... My house is in line with my two neighbors, on either side... I don't want to put a porch on because I don't want to disturb their view.... And this is the domino effect you guys have been talking about....the tip of the peninsula because that's everybody's view....You guys (ZBA) know what the setbacks are." Pischevar commented that they didn't know about the variance in the set back until the permit was pulled until a few weeks ago. Pischevar also commented, "...As soon as that setback is destroyed by someone, it's just a matter of years before everybody lines right up with it. This is a pinnacle property on that peninsula..."

MINUTES
Page 4 of 6
ZBA
10/8/19

Marjorie Richards of 3122 Elmwood Beach, commented that she has been on lake since 1969. M. Richards is right next door to S. Kothawala. Richards noted that she built her home according to all requirements and that her daughter is taking over home when she is gone. Richards spoke of shifting the placement of S. Kothawala's proposed home so it will not take away the view from all of the other residents "up and down the line".

Kamran Pischevar of 3104 Elmwood Beach commented that they (neighbors to the south of Kothawala) were able to get their own measurements to the high water point. M. Richards' home, their home and another neighbor next to Pischevar's, are all in the same line of approximately 56 feet (front setback) per K. Pischevar. (The three neighbors to the south of Kothawala's property). K. Pischevar referred to a new survey distributed showing a 32 ft. (setback). K. Pischevar commented on 32' for the one (neighbor) at the point. K. Pischevar commented that there was a substantial difference. "We're not talking about a couple feet," K. Pischevar added.

When asked by D. VanHouten, of the ZBA, about possibly shifting the house (plan) on the lot, **Mr. Kothawala** commented that it would affect every other setback (if plan was shifted). Mr. Kothawala commented – when he designed the home, it was designed within the building envelope.

L. Pischevar – of 3104 Elmwood Beach commented that it's a cul de sac and "I personally don't have a problem if they change a setback from the street." She added that she didn't mind waiving other setbacks because they don't affect their view. Pischevar commented the only setback she is firm about is "the one from the high water mark because that's the one that affects us."

Eric Hannapel - commented that he lives about 25 houses before Shashine (Kothawala). E. Hannapel commented that he has probably played in every yard and tree on the point since he was four years old. E. Hannapel commented that when someone walks out of their house, no one looks to the right and should expect to see 100% view of the lake. Hannapel commented that he signed a letter today for Shashine (Kothawala). "This township granted him a building permit and then they revoked it, and I take issue with that. I think it's a reasonable thing that has been planned, designed and I think it should be offered."

L. Pischevar commented, "The burden of the permit being issued and then revoked....from the neighbors perspective- it should never have been approved. Pischevar commented that the neighbors never knew about the setback previously. "We never had opportunity to comment at that time on the setback".

Attorney B. Crocker commented on the third house to the south, being more at a 30 ft. setback.

Lisa Fournier of 3122 Elmwood Beach– been on Gun Lake for 50 years. Commented that the house lines up exactly going down with 4 houses. Fournier described the deck of her mother’s (M. Richards) home. Mrs. Richards’ deck is in two different layers, one four inches off the ground and then one that is one step above. Fournier commented that Kothawala’s home used to line up with the others when she was a kid, but he has added an addition since then.

Ed Wilson, 3324 Rothwell Ct., Kalamazoo – has a vacant lot on Shady Lane (near location of previous variance request earlier this evening). Wilson commented that he didn’t see Mr. Hopkins’ plan either. Wilson commented that Shashin did the right things and got it approved. “I’m concerned when we start building... and it gets revoked. I don’t see how that happens. It’s really not fair,” commented Wilson.

Brian Hubble 3662 Elmwood Beach. Reiterated comments on the building permit, adding that you move forward once it is granted. B. Hubble noted that it is hard to get contractors. Those contractors all moved to other jobs. Hubble commented to neighbor commenting that they have to look thru Kothawala’s house to see the lake, that the neighbor bought the house knowing that was the view. (The neighbor commented that they knew that, and didn’t want it to change.)

Motion to close public hearing by Heilman with support from Jansens at 8:08 p.m. All eyes. MOTION CARRIED.

ZBA members went through each standard of the Practical Difficulty Test.

R. Harvey, Professional Planner, noted that the Zoning Administrator was correct in revoking the building permit for the proposed house once it was determined that the proposed waterfront setback was in violation of the Zoning Ordinance. She explained that the Zoning Administrator does not have the authority to grant a variance from the setback requirements and that the applicant was appropriately directed to the Zoning Board of Appeals to seek the requested relief. R. Harvey reminded the Board that the variance request is to be reviewed in consideration of the variance criteria set forth in Section 20.11 and should not be based on or guided by administrative actions.

Letter from neighbor- dated September 23, 2019, was read into record (by Chairman Welch) from Kim & Janet Emery of 3092 Elmwood Beach – next door neighbor(s) of S. Kothawala. The Emery’s “feel the current footprint is close enough to the lake. Another 14 feet would block our views to the North,” noted the Emery’s in their letter.

Motion by VanHouten with support from Jansens to approve variance request based on Practical Diff. Test Standards: #1) One of a kind property, located on a peninsula, lakefront averaging doesn’t work on a triangular lot. #2) Property condition is not so common and it won’t be recurring. #3) Literal interpretation does deprive the applicant of rights enjoyed by others. #4) The variance would not be detrimental to adjacent properties and new design might help the end of street with congestion. #5) Granting the variance will not impair ordinance. Property is unique, one of a kind. #6) – Applicant designed home based on what PCI approved. “With water on three sides – it’s a tough one to build on,” added VanHouten. ROLL CALL vote: VanHouten: Yes, Welch: Yes, Jansens: Yes, Frigmanski: No, Heilman: No. Yes: 3, No: 2. MOTION CARRIED.

MINUTES
Page 5 of 6
ZBA
10/8/19

MOTION to APPROVE

OTHER SUCH BUSINESS/OLD BUSINESS:

MINUTES
Page 6 of 6
ZBA
10/8/19

Discussion occurred regarding:

Timeliness of receiving information for ZBA meetings and variance requests. The importance of legal surveys versus sketches, was noted as well.

OTHER SUCH BUSINESS

Question was posed: Is the PC (Planning Commission) working on addressing the anomaly of one home being set back (120 feet- for example)? It was commented that the PC did not instruct Harvey to research on the anomaly situation of the setback (150 ft. – in both directions). Harvey commented that the PC trusts that the ZBA will use their criteria and appropriately identify unique situations. Jansens added that the PC is not doing anything on it- per P. Jansens.

“VIEW SHED” had been mentioned in the meeting tonight and was brought up as a possible consideration. “The Creep” toward the lake was mentioned as well.

Administrative action consideration in determining the approval or disapproval of a variance request was discussed.

Road setbacks - it is from the lot line. If unplatted, and outside of the road right-of-way– then it is “as traveled”.

Question posed regarding: If a farm is non-conforming – and barn is more than 50% burned down, they can’t rebuild?...because the zoning changed? Comment was made by Harvey, and it was noted that the PC is working on this issue.

Elections: R. Harvey advised that the election of ZBA officers take place when the ZBA meets for its first time in 2020.

ADJOURNMENT:

ADJOURNMENT

Motion by Welch with support by Heilman to adjourn meeting at 8:46 p.m. All Ayes.
MOTION CARRIED.

Approved by: _____ Date: _____
Ron Heilman, ZBA Secretary

Approved by: _____ Date: _____
Janice C. Lippert, Township Clerk

Respectfully submitted by:
Deb Mousseau
Recording Secretary, 10/8/19