

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS

Thursday, June 27, 2019

7:00 PM

I. Meeting Called to Order By:

II. Roll Call

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:03 PM.

Members Present: Chairperson – Michelle Wietek Stephens; Secretary - Kendell Milton; Board Member – Mark Maki; Member - Geno Angeli - Paul Charboneau; Alternate – Anthony Giorgianni

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Lisa Perry, Administrative Assistant

III. Approval of Agenda

Wietek-Stephens advised the Commission there was a request to add the election of the board positions to the agenda as it was inadvertently left off.

Moved by Wietek-Stephens, seconded by Milton, to approve the agenda for with the addition of the elections, item A under New Business.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of Minutes

A. October 28, 2018 Zoning Board of Appeals meeting minutes.

Moved by Maki, and seconded by Charboneau, to approve the minutes as changed with the revisions stated tonight.

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

Deborah Mulcahey, 633 Lakewood Lane – Appreciates the work the Zoning Board of Appeals does. Stated the work is not always welcomed or agreed upon and she welcomes the civil discourse.

Public comment closed at 7:17 pm.

VII. New Business

A. Election of Officers

Maki moved, Milton seconded to nominate Wietek-Stephens as Chair.

AYES: 5 NAYS: 0 MOTION CARRIED

Maki moved, Angeli seconded to nominate Charboneau as Vice-Chair.

AYES: 5 NAYS: 0 MOTION CARRIED

Wietek-Stephens moved, Angeli seconded to nominate Milton as Secretary.

AYES: 5 NAYS: 0 MOTION CARRIED

B. Variance Application ZV 19-09

Staff Introduction

Kim and Carol Parker, owners, wish to build a second story addition onto a structure located at 483 Lakewood Lane in the waterfront residential (WFR) zoning district that does not meet the current side setbacks of 10 feet for a legal conforming residence. The current setback for the existing structure is approximately 2' 9" from the west side lot line of the neighboring property at 481 Lakewood Lane and 3' from the east side lot line of the neighboring property at 485 Lakewood Lane.

According to Section 6.1.A Height and Placement Regulations in the Township Zoning Ordinance:

“Except as otherwise specifically provided in this Ordinance, no structure shall be erected or maintained between any lot line and the pertinent setback distance listed ... The side setback requirement applies to a side lot line and also to any lot line which is neither a front, rear, or side lot line. All distances are measured in feet from the drip lines of said structure/s.”

The dwelling was built in 1952 as a residential home prior to Township zoning ordinances. The property has been used as a camp and residence since then. The property was zoned Lakeshore Residential (LS/R) in 1977 and re-zoned Waterfront Residential (WFR) in 2008.

Lot Size

Latest Township records indicate the applicant's lot is 0.805 acres, with a frontage of 50 feet and a depth of 701.06 feet. The lot size measurement is in compliance with the minimum lot size for the WFR zoning district of 25,000 square feet.

Lot Width

Township records indicate the lot frontage is 50 feet. The lot width is not in compliance with the minimum lot width of 125 feet for the WFR zoning district.

Additional Measurements

The southwest edge of the applicant's home and attached garage is approximately 2.9 feet from the west property line. The northeast corner of the applicant's home is approximately 3 feet from the east property line. Both measurements are under the ten feet of setback distance required for the applicant's project to move forward.

The applicant is proposing to add a second floor on the existing structure on the property that will follow along existing structure walls. The existing roof will be removed to accommodate the second floor, and a new roof will be installed. The new height of the proposed project will be 22' 5" to the mid-roof height and 26'4" from grade to the ridge of the new roof. The proposed height is within the 30-foot height maximum for the structure.

One addition will be added beyond the existing structure walls. This addition is approximately 32 square feet (5' x 6' 4"), and will be located at the northwest corner of the current structure. This addition, which will accommodate a staircase going to the second floor, does not encroach on the west setbacks for the property.

The closest setback encroachment on the west side of the existing structure is 2' 9" at the southwest corner of the garage (shown on the survey). The closest encroachment on the east side of the structure is 3 feet at the northeast corner of the structure.

Two comments were received from the public related to this project – one was received at the office counter, and the other via mail.

Public Comment

Throenle stated that public comment regarding the variance application ZV 19-09 cannot be taken as the meeting had been tabled.

Board Discussion

Since the packet was sent out there have been two email comments were received regarding this zoning application. One was sent to the Chairperson of the Zoning Board of Appeals on one was sent to the Zoning Administrator. They were received after the deadline of the printing of the ZBA packet so they were printed and presented to the Commissioners at the start of the meeting this evening.

Also included tonight is a copy of variances regarding setbacks on Lakewood Lane, this was requested by the Chairperson via email. This document goes back to 1999.

Milton asked if all cases pertained to 50 foot lots, Throenle stated they were not but were all setback issues.

Maki objected to getting information at the last minute for a meeting. He also felt the list of variances did not tell the ZBA anything. Maki motioned to table the meeting until they could have more information and had more time to review the information given.

Wietek-Stephens opposes this request and Charboneau stated the one piece of the information provided this evening was a reiteration of public comment and the other was a second public comment and he felt there was no other information involved that would change the information supplied in the packet.

Wietek-Stephens added that she would read them into the minutes if it would help. Maki stated it would not. These were added into the agenda and agenda materials.

Wietek-Stephens stated she would like to move on with the Staff presentation.

The resident to the west of the proposed variance was in attendance and stated that she was not properly notified and was unaware of the impact to her property.

The Commission had discussion and decided they wanted more information regarding other setback variances issued in the area, more information regarding the measurements of the southwest corner of stairwell, and an improved public notification.

Board Decision

Wietek-Stephens motioned, Charboneau seconded, to table variance application ZV 19-09 to acquire more information, specifically more detail on setback variances granted in the neighborhood, an improved public notification, resolution of the issue if two variances are needed for the two non-conformities on the property, and a measurement for the southwest corner of the stairwell structure for the earliest possible date.

Vote Ayes: 5 Nays: 0 Motion Carried

VIII. Public Comment

Deborah Mulcahey, 633 Lakewood Lane – Felt the whole concept “sucked” regarding public notice, admission of public comments to the packet. She also could not read the numbers on the plans supplied. Stated the plans were not available by the 19th so she could not add her public comment. Is puzzled why this is before the ZBA as there are prudent alternatives. Referenced Mr. Brinks email referencing written comment from May, asked where this response was. Stated there is an alternative by making the second floor smaller than the first floor or go to the South. Questions the true motives of what is being done as this has been a short term rental in the past. Stated the zoning ordinance setbacks were in place when these owners purchased this property in 2006. Totally opposed to expansion on a non-conforming lot when there are alternatives.

Carol Hicks, 360 Shot Point Drive – Has resided on the Lake Superior for 50 years, knows more about snow drifting and wind factors. Holds a PHD from College of Engineering, has been schooled in engineering and architecture. He has spent twelve years on the opposite side and have seen where people tried to pull the wool over the eyes to get what they want, does not feel this is the case in this situation. He knows all the numbers and setbacks from every corner of this house, had all the data ready to present. Feels it would be asinine to have two requests and pay for it twice. Cannot see any water from the first floor of the house due to the sand dunes, this is why they want to go up.

Kim Parker, 483 Lakewood Lane – Absolutely no plans to continue a short term rental as in the past. Then plan they have in place is what they want to go with and are willing to roll the dice with the ZBA, if it does not get approved, they will not permanently move into the house, they will do something else. Wants to build a home they can enjoy for many years to come. The plan presented is their best option and the ZBA to consider it. The view on the website, when they were renting, was from the gazebo.

IX. Township Board Member/Planning Commission Member Comments

Mark Maki (Board representative) – Spoke on the concerns regarding the *Sign Ordinance*. It was four pages and part of the *Zoning Ordinance* from 1977 to 2015. He

was the administer for 25 of those years. Gave credit to the Planning Commission regarding the electronic sign section, best he has seen. Feels they have changed the ordinance to allow non-compliance signs to some degree. It is now 23 pages and hard to read. Spoke regarding the trailer sign at Lakkenland. Planning Commission is now going review the *Sign Ordinance* again. Feels the *Sign Ordinance* does not get enforced and should come before the ZBA for clarification.

Milton (Planning Commission representative) – Requested that future site plans have zoning information for adjacent properties included on the plans submitted with the application.

X. Informational Items and Correspondence

- A. Township Board Minutes – 06.10.19 draft
- B. Township Newsletter – June, 2019

Adjournment

Wietek-Stephens adjourned the meeting at 8:43 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS

Thursday, July 25, 2019

5:30 PM

I. Meeting Called to Order By:

II. Roll Call

Chairperson Michelle Wietek-Stephens called the meeting to order at 5:35 PM.

Members Present: Chairperson – Michelle Wietek Stephens; Secretary - Kendell Milton; Board Member – Mark Maki; Members - Geno Angeli - Paul Charboneau; Alternate – Anthony Giorgianni

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Lisa Perry, Administrative Assistant

III. Approval of Agenda

Maki advised the Commission he would like to make a short presentation regarding the signs in the Township. He advised he wasn't looking for any decisions. This would be added as section VII, Item B.

Moved by Milton, seconded by Maki, to approve the agenda with the addition of the sign presentation, item B under New Business.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of Minutes

A. June 27, 2019 Zoning Board of Appeals meeting minutes.

Moved by Milton, and seconded by Charboneau, to approve the minutes as written.

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

Deborah Mulcahey, 633 Lakewood Lane – Thanked the Zoning Board of Appeals for discussing the meeting materials this evening. (itemVII.A) Offered suggestions for allowing the public to get comments into the packet and suggested a draft agenda so the public may know ahead of time what will be on the agenda.

Public comment closed at 5:41 pm.

VI. Unfinished Business

A. Variance Application ZV 19-09

Throenle asked the Chair person, Wietek-Stephens if she would allow public comment before the Staff introduction to allow him to address issues that come up in the public comment. Wietek-Stephens allowed this.

Public Comment

Laurie Krzymowski, 741 Lakewood Lane – Built a house on Lakewood Lane and is against granting appeals as there are other ways to build without them. Spoke regarding noise and fire access to structures on Lakewood Lane.

Cathy Crimmins, 422 E. Michigan Street/485 Lakewood Lane – Owner of the property directly to the East and agrees with the previous comments regarding fire access as the houses in the area are old. Her house is closer to the lake so it has never been an issue but feels the second story addition would be an issue. Has concerns regarding snow removal if this were to be a year round home. She is doing her remodeling according to the zoning guidelines and feels that the lot is not suitable for a house this size. Mentioned the list of eight variance requests of properties on Lakewood Lane, that were in last month's packet, all were granted but stated that none were as close to the lot line as this one is.

Wietek-Stephens asked Cathy Crimmins, regarding the variances listed in the packet last month, where her information came from. Crimmins answered from the paper in the packet and Wietek-Stephens stated it was not on there, as she was also wondering the size of those setbacks. Wietek-Stephens did note she saw some notes on a couple that refer to the setbacks but it's not general information that is provided for each of them.

Deborah Mulcahey, 633 Lakewood Lane – Spoke regarding to the Township website not having the up-to-date information for this variance. Wondered why this property has four people listed on the deed and only two applicants on the variance request. There are several properties at 50 feet in width and feels that fire and access are concerns. Questioned the authenticity of the site plan as there are differing dimensions from the survey and the Township assessor. She also questioned the size of the septic system and felt there were different options on the placement of the stairwell. Has concerns regarding structural issues of adding a second story. Asked the Zoning Board to add a stipulation, if the variance were to be granted, that either floor could not be independently rented as a two unit property.

Kim Parker, 483 Lakewood Lane – Owner of property applying for the variance. Addressed the issues questioned, stated there are tight quarters on 50 foot lots, his house would not be any noisier with a second story. There is a house to the left of his property and several others on Lakewood Lane with two stories and feels the fire department is capable of handling that situation. Stated his house has had snow

removal year round since 2006 when he was renting the house out. They will be living there now and no plans for renting any part of it out. Pointed out if the neighbor rebuilds the screen porch according to plans it would be twelve feet closer to the lake than his house and should not be affected. Addressed the names on his deed as himself, his wife, and two children. Explained his survey shows 52 feet on the lake side and 50 feet at the road (Lakewood Lane). Will be working on the permit for the septic if they get the variance.

Staff Introduction

Kim and Carol Parker, owners, wish to build a second story addition onto a structure located at 483 Lakewood Lane in the waterfront residential (WFR) zoning district that does not meet the current side setbacks of 10 feet for a legal conforming residence. The current setback for the existing structure is approximately 2' 9" from the west side lot line of the neighboring property at 481 Lakewood Lane and 3' from the east side lot line of the neighboring property at 485 Lakewood Lane.

According to Section 6.1.A Height and Placement Regulations in the Township Zoning Ordinance:

“Except as otherwise specifically provided in this Ordinance, no structure shall be erected or maintained between any lot line and the pertinent setback distance listed ... The side setback requirement applies to a side lot line and also to any lot line which is neither a front, rear, or side lot line. All distances are measured in feet from the drip lines of said structure/s.”

The dwelling was built in 1952 as a residential home prior to Township zoning ordinances. The property has been used as a camp and residence since then. The property was zoned Lakeshore Residential (LS/R) in 1977 and re-zoned Waterfront Residential (WFR) in 2008.

Latest Township records indicate the applicant's lot is 0.805 acres, with a frontage of 50 feet and a depth of 701.06 feet. The lot size measurement is in compliance with the minimum lot size for the WFR zoning district of 25,000 square feet.

Township records indicate the lot frontage is 50 feet. The lot width is not in compliance with the minimum lot width of 125 feet for the WFR zoning district.

The southwest edge of the applicant's home and attached garage is approximately 2.9 feet from the west property line. The northeast corner of the applicant's home is approximately 3 feet from the east property line. Both measurements are under the ten feet of setback distance required for the applicant's project to move forward.

The applicant is proposing to add a second floor on the existing structure on the property that will follow along existing structure walls. The existing roof will be removed to accommodate the second floor, and a new roof will be installed. The new height of the proposed project will be 22' 5" to the mid-roof height and 26'4" from grade to the ridge of the new roof. The proposed height is within the 30-foot height maximum for the structure.

One addition will be added beyond the existing structure walls. This addition is approximately 32 square feet (5' x 6' 4"), and will be located at the northwest corner of the current structure. This addition, which will accommodate a staircase going to the second floor, does not encroach on the west setbacks for the property.

The closest setback encroachment on the west side of the existing structure is 2' 9" at the southwest corner of the garage (shown on the survey). The closest encroachment on the east side of the structure is 3 feet at the northeast corner of the structure.

Two comments were received from the public related to this project – one was received at the office counter, and the other via mail.

The original application was submitted April 22, 2019 and it was tabled at the June meeting because the Zoning Board wanted an improved public notification, more information regarding more detail on setback variances granted in the neighborhood. They also wanted a resolution of the issue if two variances are needed for the two non-conformities on the property and a measurement for the southwest corner of the stairwell structure for the earliest possible date.

Throenle reminded the Zoning Board if the setbacks on this property were met, and they were not here this evening, a second story would have been granted with a Zoning Compliance Permit.

Board Discussion

Wietek-Stephens commented there were questions at last month's meeting as to why this had come to the Zoning Board of Appeals. She explained that it is a non-conforming structure (does not meet the requirements of the *Zoning Ordinance*) and any non-conforming structure has to get approval from the Zoning Board of Appeals. She further explained that Throenle's job is to enforce the *Zoning Ordinance* and the ordinance states that a non-conforming structure cannot be enlarged. The Zoning Board is to assure the structure is not detrimental to the public safety, health, welfare, and character of the neighborhood.

Wietek-Stephens explained that looking at the site plan, the west side would be compliant but the east side is 4-1/2 feet from the property line to the foundation and 2-1/2 feet from the dripline to the foundation making it very tight.

Maki asked what was being used as the measurement, Throenle commented it was the dripline as standard practice.

Charboneau commented there was an existing eave over the existing foundation and Throenle confirmed that was correct. Throenle explained this would be not move the eave over any more, it would just raise it up.

Charboneau asked if the staircase was located inside the structure and the owner of the property, Mr. Parker answered it was inside.

Wietek-Stephens stated the reason the Zoning Ordinance prohibits the expansion of non-conforming structures is that expansion entrenches the non-conformity when the goal of the ordinance is that these structures should go away or be made to conform.

Wietek-Stephens commented that most lakefront property gets overcome with giant houses and it gets tight. She stated that it is reasonable to put a second story on this

house, the problem is the house is so close to the lot lines that it unintentionally impedes the view and access. She also stated that the neighbors may change their properties in the future and these issues may become more onerous if the Zoning Board allows this structure to expand to this extent.

Throenle referenced there were properties in 2000 and 2008 there were homes on 50 foot lots in this neighborhood that added second story additions, adding this would not be precedence setting property nor is it a massive trend as the last time was in 2008.

Throenle asked the neighbor on the east how they were looking to expand their property and she answered it would be a bedroom on the opposite side that would not be a second story. She also stated that due to the Parker's renovations, they may need to extend their septic and drain field.

Maki asked Throenle to repeat the information from 2000. Throenle stated it was a second story addition with a 5 foot setback.

Wietek-Stephens asked if Throenle recalled the setback on the 2008 variance for the second story. Throenle answered it was not in the record, he looked at the record again prior to the meeting. It does state that it is a non-conforming enlargement to construct a second floor on the existing structure and stated it was located behind neighbor's houses and would not obstruct the view. Throenle added from what he was reading it would be similar to the variance in front of them tonight.

Throenle stated there was another variance for an addition with a setback issue in 2012 but was not for a second story. He also added there another variance request at Shot Point several years back, it was 35 feet from the water and was approved to go up with second story but not out.

Maki questioned Mr. Parker regarding the thought process of the outside stairwell and why it was not considered on the inside of the structure. Parker replied that it was on the inside of the structure and demonstrated to the Zoning Board, on the plans, where and how it would be located. Charboneau asked if it was completely enclosed and Parker stated it was.

Maki asked if the Fire department would be notified on these type of variances and Throenle answered that Chocoley Township has no fire inspection on any Zoning Compliant Permit. Maki felt it would be advisable to notify the Fire and Police departments regarding these type of requests.

Maki asked if the west side was 8 feet to the dripline and Throenle answered it would be 9 feet 4 inches assuming it is a 2 foot dripline which is standard.

Maki asked what the northeast corner measurements would be and Throenle state 2 feet 6 inches to the dripline.

Maki went and looked at the property and felt there was an issue of the addition being too high in that area and how the house sits. Maki asked if there was any consideration to changing the plans and making the setback shorter on the one side. Parker stated they wanted to add value and felt this would take away from that and prefers to work with the original plan.

Throenle presented a visual to help the Zoning Board get an actual feel of the size of the variance, which amounted to 6 feet, he asked the Zoning Board if that changed the overall concept of the second story.

Wietek-Stephens stated she what swayed her was the fact she went to the site and it was difficult to walk from the parking area, around the garage, on the southwest side without feeling her arm was trespassing on the adjacent property. She also mentioned the gravel from the parking area is right on the property line and was not sure if that was allowed. She stated it was equally tight from the eave line on the northeast corner. She told Parker he did not create the situation as the garage was there but this is what swayed her and she felt this structure would not be a good candidate for the future, and that remodeling or relocation would be preferable to expansion.

Parker agreed it is a tight space but would never get less tight even by doing nothing or adding another story it would still be tight.

Throenle commented on the tightness as he felt that also but only at the garage. Once you get passed the garage it opens up. Throenle stated for whatever reason these house were skewed when they were built as he has seen in other cases in the same area. Throenle asked Parker if there had been any discussion of moving the garage, Parker commented it had never occurred to him, it could be considered.

Wietek-Stephens commented the structure could be torn down or moved. Throenle stated this house has a basement so this would cause a considerable amount of expense as it could not be rebuilt on the same foot print.

Wietek-Stephens pointed out if the neighbors ever put a privacy fence or landscaping of any kind, there would be the same issues in the northeast corner and Throenle agreed. She stated that it is not apparent at this time as it is only native plants and encroaching on the house.

Throenle asked Parker how many times he goes around that corner (northeast) of the garage, Parker commented that would be tough to answer, Wietek-Stephens commented there was no apparent path when she was there. Parker stated the easiest way to the lake would be using the front door.

Milton commented that it would not matter to him until the building are less than 15 feet apart and these buildings are more than that apart, he has no problem going up.

Angeli questioned if the ordinance prohibits an existing structure from being expanded, does it specifically say from expanding up and out. Wietek-Stephens stated it is expanding, changing internally, and doing “stuff” with non-conforming structures.

Throenle commented that it basically says the footprint. There has been variances in the past that have been for non-conforming structures that were approved to not increase the footprint but were allowed to build up. Angeli state that is what he sees in this variance.

Wietek-Stephens interjected and advised the Zoning Board that it says *“Establish to the satisfaction of the Zoning Board of Appeals that the proposed extension, expansion or enlargement of the existing, lawful non-conforming structure would not*

be contrary to public health, safety or welfare with the spirit of the Zoning Ordinance or the Township Master Plan.” Wietek-Stephens stated this is considered an expansion.

Charboneau stated there have been non-conforming properties in the past that have built up or out of the footprint and the variance was for a small piece off the footprint. Throenle answered that was correct and reminded the Zoning Board his list only went back to 2000.

Maki suggested changing the blueprint as he does not like a second story added to a 2 foot 9 inch lot line setback. Throenle stated it is that close to the lot line but not the property next door.

The neighbor to the east asked about her property values if this ordinance is granted. Throenle commented they cannot predict what properties will sell for in the future and the 2 foot 9 inch tightness will still be there with a one or two story house.

Wietek-Stephens reminded Throenle that the issue is perpetuating a non-conforming property. Throenle commented that he understands this and reminded the Zoning Board they have made exceptions in the past.

Maki commented he does not know those cases and all cases rise on their own merit. He has an issue with a second story looking down onto the neighboring properties. Angeli reminded him that one neighbor is 30 feet away on the west side and the east side is 40 feet away. Maki stated determining what fits makes these variances interesting and troublesome.

Angeli questioned where the existing drain field was, Parker pointed out on the map and Angeli agreed that would probably have to be expanded. Parker acknowledged this but was waiting to go further upon the outcome of the variance.

Throenle commented there were natural buffers (tree line) and asked Parker if he planned to keep them in place and Parker answered yes, he planned to.

Throenle pointed out that either side neighbor could add a second story, which would immediately impact the Parkers, but it would be allowed.

Wietek-Stephens reminded the Zoning Board that this structure is non-conforming by most of the side setbacks and it would increase this in a vertical direction.

Throenle asked Maki if the lot lines of 50 foot lots could be redrawn, have the survey markers moved, to take care of the non-conformities. Maki felt it could not unless one party conveyed property to the other. There was no clear answer on this.

Based on the above information the following motion(s) were made.

Board Decision

Wietek-Stephens motioned, Maki seconded, after conducting a public hearing and review of the Staff Review and Analysis for Variance Request ZB 19-09 for parcel 52-02-109-037-00 at 483 Lakewood Lane, Marquette, MI, the Zoning Board does not find that the request demonstrates the standards pertaining to the granting of non-use variances, and hereby denies Variance Request ZB 19-09 with the following findings of fact:

1. *Strict enforcement of the Zoning Ordinance would not cause practical difficulty because the structure currently functions as a dwelling and there are possibilities for construction of an approved compliant dwelling.*
2. *Granting the variance would be contrary to the public interest because the setbacks are extremely tight on both the Southwest and Northeast corners. It is difficult to walk without feeling as if you may trespass on adjacent properties.*
3. *There are no circumstances unique to the individual property on which the variance is granted that would prohibit its use as a residence.*
4. *The variance request is due to the actions of the applicant and their desire to expand the existing structure and leave the non-conformities in place.*

AYES: 2 NAYS: 3 (Angeli, Charboneau, Milton) MOTION FAILED

Charboneau motioned, Milton seconded, after conducting a public hearing and review of the Staff Review and Analysis for Variance Request ZB 19-09 for parcel 52-02-109-037-00 at 483 Lakewood Lane, Marquette, MI, the Zoning Board of Appeals makes a motion to grant the request because:

1. *Strict enforcement of the Zoning Ordinance would not cause practical difficulty because there is no usable property to move the structure and moving the structure would be an extreme burden on the applicant*
2. *Granting the variance would not be contrary to the public interest because there is no safety concern here or health concern.*
3. *The circumstances unique to this property is it was built in 1952 predating the ordinances and denying the application is not going to make the property any more conforming or improve the non-conforming in any way.*
4. *As correlation to that, the variance request is not due to the actions of the applicant as the property was built in 1952 predating the ordinances. Contingent on remaining within the footprint, with exception to the landing for the staircase and that includes the driplines.*

AYES: 3 NAYS: 2 (Wietek-Stephens, Maki) MOTION PASSED

VII. New Business

A. Meeting Materials Discussion

Staff Introduction

Three items were submitted to the members at the meeting that were completed after the receipt deadline for the packet for the June meeting. This prompted discussion and a request to add an item to this month's agenda to discuss the process.

Traditionally, all packet materials for the Township Board, Planning Commission, and Zoning Board of Appeals must be submitted no later than noon on the Wednesday prior to the scheduled meeting date. This submission date was set in

order to prepare packets prior to the meeting without having to insert additional materials into the packet after the packets are prepared and delivered.

Items have been overlooked in the past for all three packets (Board, Planning Commission, and Zoning Board of Appeals) that were received prior to the deadline, especially if they were received via email. Traditionally, those materials are given to the Board, Planning Commission or Zoning Board of Appeals on the night of the meeting with an explanation as to why the materials were not included in the packet. It is up to each (Board, Planning Commission, and Zoning Board of Appeals) as to the acceptance of the materials for the meeting.

This process was initiated as citizens were waiting until the last minute to submit their comments or materials for the meeting. This caused several issues, especially if the comments or materials were not discovered in email files until after the meeting.

Board Discussion

Wietek-Stephens thanked Throenle for the explanation as she now understands the process better. She does not have any problems with the packet preparation dates, she does have an issue with residents finding out about an item in the packet after the deadline and not being able to comment on it.

Throenle stated there is a public notice in the newspaper and on the Township website, and the neighbors within 500 feet of the project get notification in the mail stating the time frame. At some point it should go back to them.

Wietek-Stephens feels the 500 feet is small, even though it has been increased from 300 feet. In the rural areas where the lots are bigger there would be hardly any notices sent. The condensed areas, with smaller lots, have more issues with this.

Angeli stated an increase in the notification footage would increase the amount of people and the meetings would go on double the amount of time. Wietek-Stephens stated it would be better know what was going on and comment than come after and say they were not informed. Angeli feels the 500 feet is plenty for people to comment.

Throenle interjected he has had people come in three months after a meeting and say they did not know what was going on and have sent a letter. The number of feet does not make the difference, it's the responsibility of the reader of the letter to follow up with the deadline.

Maki asked if written comments, after the deadline, were given as a handout to the Zoning Board. Throenle commented he has attempted to do this in past meetings and it did not work very well. If the cutoff was held to the same standards the Township Board and Planning Commission follow, it would be done on the Wednesday before. It has streamlined the process for packets immensely.

Maki asked if people handing in comments, beyond the deadline, were told it would not be included in the packet. Throenle answered they were told. Maki stated they would have the option to come to the meeting to make comment, Throenle agreed. Throenle also stated if the person could not make it to the meeting, they could put

their comments in writing and have a friend or neighbor read them into the public record. This has happened in the past.

Maki stated in the past when there was a variance, rezoning, conditional use, there had to be a posting on the property per State law but has since been changed. Maki felt this would give people more notice as they went by the property. Maki agreed that it is tough but the question is what to do with it when you get it late.

Charboneau stated you can post it to the website but in the end, what material are you allowing to in. Throenle stated even if it is plans or something pertaining to the item on the agenda, if it comes in after the deadline it would not be put into the packet. Charboneau stated an applicant can be reached for discussion but it's the public comment that is the problem.

Throenle stated there are many ways to get public comment in before the deadline, he has taken comments over the counter and he knows that Wietek-Stephens has taken comments via the phone. Wietek-Stephens stated she would not be doing that again, she would direct the calls to Throenle in the future.

Wietek-Stephens does not like the fact there is no public comment a week before the meeting. She does, however, agree they could make arrangements with someone to get comment in but knows not everyone has a big support structure to help with this. She would like the Zoning Administrator to make a good faith effort to get the Zoning Board the comments. She is in favor of handouts. She knows that everyone on the board does not agree with handouts.

Throenle asked if it would be acceptable to read late comments into the record. Charboneau stated it would come down to volume. Wietek-Stephens stated they have never had an issue with volume as the public usually comes to the meeting and makes comment. Throenle felt the last meeting was the first time for the Zoning Board to get late comments.

Throenle would be willing extend the current deadline from Wednesday before to the Thursday before. Wietek-Stephens does not see how one day would make a difference. She would like to continue with the policy of having the handouts available the night of the meeting and reading them into the record. Charboneau asked if they could also be posted on the Township website. Throenle stated in the past comments have been added to the electronic packet and reposted. Throenle stated it would still be up to the Chairperson to decide if the comment gets included in the packet as sometimes the comments do not pertain to anything in the packet. Wietek-Stephens stated if it is late and does not pertain to the current variance or packet materials, the person could be advised it would be held for the next meeting. Charboneau asked if that would be taken as public comment as if the person was making comment at the meeting and Throenle stated yes, it would be. Wietek-Stephens stated this could be listed as part of the procedure for taking public comment.

Maki stated the problem with additions is someone may have read the agenda before the additions and now they are not aware of the additions. Feels the Zoning Board

should continue with handouts and reading them in and deal with them on a one by one basis.

Throenle stated they would then be added to the official packet after the meeting. Throenle felt everyone had the same idea so he suggested adding the following statement for the Zoning Board of Appeals: “Any comments that come in past the deadline of noon on Wednesday, will be scanned and emailed to the Zoning Board members as well as put on the table, to be read the night of the meeting, assuming the comments are related to the variance.”

Board Decision

Wietek-Stephens motioned, Charboneau seconded, with regard to the meeting materials discussion that the Zoning Board of Appeals will keep the existing deadlines for packet preparation, however, for variance specific public comment, those comments will be documented as handouts out at the meeting. The Chair will read them into the meeting minutes. If possible, an email to the Zoning Board of Appeals containing the comment will be made.

Vote Ayes: 5 Nays: 0 Motion Carried

B. Sign Discussion

Board Discussion

Maki stated he had sent all of the Zoning Board of Appeals a letter regarding many different signs in the Township. He discussed the fact that the *Sign Ordinance* is twenty-three pages in length. Maki reviewed the history of the size of the signs at Lakeneland and feels it goes against section 7 of the *Sign Ordinance*, due to the size and nature of the sign. He feels it would leave to problems.

Angeli asked if it would be different due to the distance away from the highway, Maki stated no.

Maki also commented on a new sign by the casino entrance. Throenle stated that sign had a permit through the Township.

Maki also talked about real estate signs and temporary signs. He feels temporary signs should be signs pertaining to an activity that only happens every so often, not something that continually gets put up and taken down.

Maki mentioned banner style signs and felt he remembered a banner was supposed to be mounted on the building. Charboneau stated he had read through the whole *Sign Ordinance*, doesn't remember all of the part regarding banners, but his recollection was they did not have to be affixed to the building, just a certain distance away from a driveway, curbs and sidewalks.

Maki also asked about the banner style signs that are popping up everywhere. There are two areas in Chocolay Township that have these. The ones in Chocolay Township say Welcome and Sale. Throenle stated these style are not classified as signs, they are classified as flags. Charboneau felt when he read the Ordinance it

stated a banner or flag could not advertise a business. Throenle stated it cannot have the business name on the flag.

Maki would like Throenle to address this issue so it can be discussed at a future meeting. He feels there needs to be some amendments or clarity as these are new signs.

Angeli asked how would they be enforced? Wietek-Stephens stated that Throenle would hand them a violation. Maki added that Throenle would have to view them as a violation before you would do that. Maki also stated the Planning Commission is going to be discussing the *Sign Ordinance* but those processes can take one to two years as there are many questions regarding this.

Throenle told the Zoning Board that he thought it was 2015 (not positive) that the Supreme Court ruled that he, as the Zoning Administrator, cannot make any judgement on sign based on its content. Maki stated we never had. Throenle stated they cannot make exceptions for certain kind of signs. (ex: real estate, political)

Throenle explained to the Zoning Board this would go back to the Planning Commission to tear apart the *Sign Ordinance* and then put it back together. The Zoning Board is only getting this as informational; they cannot mandate this gets changed.

Wietek-Stephens stated she felt some of Maki's statements were not based on content. Maki would like Throenle to address them back to Zoning Board to look at. Throenle stated there was a part of the Ordinance that states:

16.3 Fees – “Neither the Township Planning Commission nor the Zoning Board of Appeals shall consider any matter until there is first paid a fee, except that such fee shall not be required where the Township Board (#34-10-12) or any official body thereof is the moving party. The Township Board, by resolution, shall set all fees. The Township Board, by resolution, may change these fees, from time to time, as they determine appropriate.”

Throenle went on to explain there is an application available called “Zoning Application for Interpretation”. For this application to be considered by the Zoning Board it has to be completed and the fee has to be paid to the Township.

Wietek-Stephens stated this is how past sign issues have come before the Zoning Board for a variance or interpretation. Wietek-Stephens also stated her understanding was Throenle would issue citations or contacting the sign owner about interpretation and this would not be a general discussion as the Zoning Board does not have the power to create a sign ordinance. Throenle agreed and stated he is operating under the current *Sign Ordinance* and the Planning Commission is the starting point for revisions.

Wietek-Stephens asked if Throenle was not enforcing the *Sign Ordinance* waiting for Planning Commission, and Throenle commented he enforces it based on interpretation. Maki stated Throenle should administrate and the Zoning Board should be making the interpretations.

Maki commented that the Zoning Board had the ability to state their interpretation and disagree with the Zoning Administrator, but it would need the administrator's determination. Throenle stated the application for interpretation would have to be filed before the Zoning Board of Appeals could do the determination. Maki stated the Zoning Board could file the application. Wietek-Stephens felt it was not appropriate for the Zoning Board to file applications on properties in the Township. Wietek-Stephens stated she did not feel it was the Zoning Board's job to do this, she feels it was the Zoning Board's job to respond to variance requests and requests for interpretation. She also stated she felt Maki was asking the Zoning Board to make policy. Wietek-Stephens commented that she would like citations issued or owners notified to come before the Zoning Board to ask for variances as some could be deserving of variances. Maki commented this was not happening.

Wietek-Stephens asked Maki, as a citizen, if he could come before the Zoning Board and he answered he could if he wanted to pay the fee. Wietek-Stephens commented that she did not think it was appropriate to ask the Zoning Board to take it out of their budget. Maki stated the fee could be waived as they are the Zoning Board and he only wanted to get answers to his questions.

Throenle interjected that Maki had been previously advised by the Township Board to follow a chain of command for Throenle to answer the questions. Throenle stated Maki's intent was to circumvent the Township Board's directions. Maki stated the Township Board does not tell him what to do. Wietek-Stephens interjected that the Zoning Board's role is to deal with variances that come before them.

Wietek-Stephens personally felt that Lakenenland issue is a sign and Throenle commented that it is for storage of tables and chairs. She would like to give them a variance for it due to public service but it would have to be a formal process.

Maki felt the Township should amend the ordinance if they are going to allow those type of signs. Wietek-Stephens agreed that would be best but does know the best solution as she is in favor of enforcing the *Zoning Ordinance*.

VIII. Public Comment

Deborah Mulcahey, 633 Lakewood Lane – Was not happy with the approval of the June minutes tonight as they were not verbatim.

IX. Township Board Member/Planning Commission Member Comments

Mark Maki (Board representative) – None

Kendall Milton (Planning Commission representative) – None

Dale Throenle (Zoning Director) – No meeting for the Zoning Board of Appeals in August.

X. Informational Items and Correspondence

A. Township Board Minutes – 07.08.19 draft

B. Township Newsletter – July, 2019

C. Correspondence - Emerson

Adjournment

Wietek-Stephens adjourned the meeting at 8:10 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS

Friday, November 1, 2019

5:30 PM

I. Meeting Called to Order By:

II. Roll Call

Chairperson Michelle Wietek-Stephens called the meeting to order at 5:30 PM.

Members Present: Chairperson – Michelle Wietek Stephens; Secretary - Kendell Milton; Board Member – Mark Maki; Members - Geno Angeli - Paul Charboneau; Alternate – Anthony Giorgianni

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Bill DeGroot, Township Manager, and Lisa Perry, Administrative Assistant

III. Approval of Agenda

Moved by Maki, seconded by Milton, to approve the agenda as written.

Vote: Ayes: 5 Nays: 0 Motion Carried

IV. Approval of Minutes

A. July 25, 2019 Zoning Board of Appeals meeting minutes.

Moved by Maki, and seconded by Wietek-Stephens, to approve the minutes as changed.

Vote: Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

Bill DeGroot, 2017 Wetton – Introduced himself as the new Township Manager to the Zoning Board of Appeals. He started on September 30, was going to have a meeting a few weeks ago with the chair, Wietek-Stephens, but there were complications. Told the Zoning Board his door is open to discuss land-use, zoning board issues, about training and any issues pertaining to administration or the Township in general.

Mark Maki, 370 Karen Road – Stated he had sent a letter to Wietek-Stephens, Chair of the Chocolay Township Board of Appeals, the Chocolay Township Zoning Board of Appeals members, and the Chocolay Township Planning Commission but does not see it on the agenda, so he handed a copy to them. He will be sending the letter from tonight and the original letter so they will become part of the public record.

He discussed a flashing sign in Beaver Grove. Also discussed temporary signs and feels these are being misused in accordance with the ordinance.

Public comment closed at 5:52 pm.

VI. Unfinished Business

None

VII. New Business

A. Variance Application ZB 19-82

Staff Introduction

Wilbur Jennings introduced himself as the general contractor on the project for Jonathan and Samantha and stated he would answer any questions.

Throenle explained the reason for the meeting date change and apologized as he had the wrong address listed in the original publication. He also stated the meeting had been reposted in the paper with all requirements met.

He said Jonathan Housman and Samantha Asby, property owners of parcel 52-02-251-004-00, wish to add an extension onto a non-conforming structure located at 218 West Fairbanks Street in the high density residential (R-2) zoning district and it has been there for quite a few years.

Throenle stated he had sent 48 final notifications out on October 4, 2019 and no comments were received via mail, email, or by phone.

Two issues requiring Zoning Board of Appeal discussion are:

- 1) The current footprint for the existing structure is approximately 324 square feet, which does not conform to the minimum square footage requirement of 800 square feet.

According to Section 6.3.A Minimum Floor Area for Dwelling Units in the Township Zoning Ordinance:

“Every single-family dwelling shall have a minimum floor area of 800 square feet, and every dwelling unit in a multi-family dwelling shall have a minimum floor area of 600 square feet, provided: (A) It has a minimum width across any front, side or rear elevation of 20 feet and complies in all respects with the Marquette County Building Code, including minimum heights for habitable rooms. Where a dwelling is required by law to comply with any federal or state standards or regulations for construction and where such standards or regulations for construction are different than those imposed by the Marquette County Building Code, then and in that event such federal or state standards or regulations shall apply.”

- 2) The structure is approximately three feet from the front lot line, which does not meet the current front setback of 25 feet for a legal conforming residence.

According to Section 6.1.A Height and Placement Regulations in the Township Zoning Ordinance:

“Except as otherwise specifically provided in this Ordinance, no structure shall be erected or maintained between any lot line and the pertinent setback distance listed ... The side setback requirement applies to a side lot line and also to any lot line

which is neither a front, rear, or side lot line. All distances are measured in feet from the drip lines of said structure/s.

He also explained the lot size is unique as the topography behind the structure changes dramatically and goes up at almost 45 degrees to the top of the property. The property is surrounded by residential on all sides and the current lot width conforms with the minimum required in the R2 district.

Throenle continued to explain the pictures, included in the packet, of the property and the different measurements pertaining to the property setbacks and property lines.

Board Discussion

Wietek-Stephens asked if there was a basement or a crawl space. Throenle answered it was a crawl space. Wietek-Stephens if the crawl space was set into the ground and Throenle answered it was. Jennings commented he had pictures of the crawl space. Wietek-Stephens asked if it was excavated in the ground or just on top of the ground. Jennings answered it looks like there may have been an addition at one point or an excavation to create a makeshift crawl space. Jennings added it is very shallow and the plan would be to clean it up, put a paper barrier, and make it up to code without having to excavate or raise the structure.

Wietek-Stephens stated she had climbed the hill and noticed survey tapes on the top and the one farther back on the left/east side but not a corresponding one on the right. She asked if the lot ended at the top of the hill or if it went farther back. Throenle stated it goes back 140 feet from the lot line. She added there is a flat section on the top of the ridge and Throenle confirmed that was part of the property.

Maki asked if there were any provisions in the Township regarding “tiny houses” and Throenle commented there were not, the only provision is the 800 foot minimum square footage requirement.

Wietek-Stephens asked Milton (Planning Commission representative) if “tiny houses” were being considered by the Planning Commission. Milton answered not that he had heard.

Maki also stated there were non-conformance steps in the Zoning Ordinance, but they do not seem to be followed. He also stated they require the Zoning Board of Appeals to make certain findings to expand a non-conforming structure. DeGroot interjected it was Section 14. Throenle stated it was in the packet at the end of the report section, listed are the variance standards. Maki stated he was talking about the standards for the expansion of the non-conforming structure, not variance. He felt this needed to be determined before they could move to the next step due to it being a non-conforming structure similar to the last meeting the Zoning Board had.

Wietek-Stephens stated she remembered looking at that language for the last meeting but does not see it now. She added it was under non-conforming use, there is a paragraph regarding non-conforming structures.

Maki thought the applicant would need to get the approval for a non-conforming structure before they can proceed to get a variance. Wietek-Stephens stated that is what the Zoning Board of Appeals does, they make the decision on the non-conformance. Charboneau stated he believed that was the language in the variance packet.

Wietek-Stephens read section 14.2(D) which states:

As a condition of securing the approval of the Zoning Board of Appeals required by Section 14.2(C) the applicant must, at a minimum, establish to the satisfaction of the Zoning Board of Appeals that the proposed extension, expansion, or enlargement of the

existing lawful nonconforming structure:

Zoning Ordinance

1. Would not be contrary to the public health, safety, or welfare, or to the spirit of this

Zoning Ordinance, the Township Master Plan, or any other land use plans and/or ordinances enacted by the Township or any of its Boards, Commissions, or other agencies; and (#34-18-02)

2. Would not displace, inhibit, or have any type of deleterious effect upon a permitted or conforming structure, either on the subject premises or upon any nearby premises;

3. Will not increase any existing nonconformity such as, but not limited to, setbacks, height limitations, absence of sufficient parking space, or the like;

4. Will not result in any new nonconformity which did not exist prior to the proposed change; and,

5. Will meet all reasonable conditions which might be imposed by the Zoning Board of Appeals as a condition to the granting of said Application.

Jennings interjected that the applicant met all of these conditions. Maki answered he was not sure this was true as they have not reviewed this, and the applicant was looking at extending the front setback. The non-conformity would be increased as the plan is to make the structure wider. Jennings stated he could not argue that as that was correct.

Maki stated this is something the Zoning Board of Appeals needs to review for this case, but they do not have it in the packet. Wietek-Stephens agreed it would have been nice to have this language in the packet but felt it was something they could do now.

Wietek-Stephens asked if it would be a substantive change that increases the side to side non-conformity. Maki felt this should have been included with the application and it was not so they should come back with all the information. Wietek-Stephens agreed it should have been included but does not concur with coming back. She stated the question was if they met the criteria. Maki commented that this would

need to be published, Wietek-Stephens went back to the packet (VII.A.7) and read aloud that it stated the applicant wished to “add an extension onto a non-conforming structure.”

Maki felt it would the Zoning Board should have a copy of that language to look at instead of looking at the TV screen to address it. Throenle interjected if they could take a couple minute recess, he would print a copy for them. Wietek-Stephens agreed.

There was a slight recess to allow copies to be printed.

Wietek-Stephens commented they now had the language in front of them and explained to the Zoning Board where to look for the information that would be discussed.

Maki stated his concern for Section 14.2 which states:

- 3. Will not increase any existing nonconformity such as, but not limited to, setbacks, height limitations, absence of sufficient parking space, or the like;*
- 4. Will not result in any new nonconformity which did not exist prior to the proposed Change;*

He felt the new non-conformity was an extension on both ends of the structure. Wietek-Stephens commented that the non-conformity was based on the distance of the structure from the lot line, it would not matter if it was five or fifteen feet of non-conformity as it would be a depth perception. Throenle agreed. Maki commented it would either meet the setback or it would not. Wietek-Stephens stated it did not meet the setback but would not meet the setback any less because of this. Maki felt it would expand it because there would be more to the non-conformity. Wietek-Stephens felt this would only be an issue if the house were at an angle and a corner would protrude farther into the right of way, which she does not see any evidence to indicate this to be the case.

Maki asked for clarity - if it were to be kept at the same level it would not increase the front. Wietek-Stephens answered that would be her opinion as it was based on a depth from the front lot line.

Wietek-Stephens asked Throenle if the houses to the east, with the two car garages, were wider, and if he had the width of them. Throenle answered that he would access them from the assessing records. Throenle commented it was 75 feet for the lot to the east.

Wietek-Stephens asked if the house, between the two, was encroaching the front setback as well. Throenle stated he noticed an error with the aerial pictures of the property. Houseman stated there was an error as there was another property in between the two properties being discussed.

Throenle used the assessing program to locate the property in question. Wietek-Stephens asked if he had the setback for this one. Throenle stated it would be

roughly another ten to fifteen feet. Wietek-Stephens stating that looking at in person it would be closer to five feet. Throenle stated she would be accurate in stating it was within the setback. Using a rough measuring tool, it looks to be about 30 feet from the centerline and stated Wietek-Stephens was pretty close with five feet.

Charboneau asked if the setbacks on West Fairbanks were the same as on West Terrace. Throenle stated they were. Charboneau continued by saying the two houses on 209 and 213 West Terrace were new builds a few years ago, Wietek-Stephens added they were Habitat for Humanity houses. Charboneau asked if there was an exemption for them and Wietek-Stephens said she was not sure. Charboneau asked what the setback was for these, Throenle commented it was 25 feet for the front setback from the centerline for a total of 55 feet as it was in the R2 district. Maki asked if this was just in Harvey and Throenle commented it was.

Maki stated he felt the houses were in compliance but was not sure about the porches. Charboneau stated it looked like the structure was less than 55 feet from the centerline.

Maki stated that the building was 18 feet x 18 feet, why not tear it down and start over. Throenle answered that even if they tore it down and started over, an 800 foot structure would not fit in that space enough to meet the setback. Maki stated they could go into the hill. Wietek-Stephens commented she had that same thought and that was the reason she asked about the width for the lots of the other houses. It appeared that those lots are wider to have a bigger house and that would make it more feasible for that kind of earth moving.

Maki stated he was not concerned with the size as much as it being three feet from the front lot line and now it will be bigger. He asked again why it should not be torn down as it is uninhabitable and in poor shape. Angeli stated it would be not be cost effective to tear it down and have to put in another foundation. Ashby (owner) asked if she could comment, Wietek-Stephens stated she could. Ashby explained that they had discussed many possible solutions for this property and the cost of building into the hill to make it a big enough structure would be cost prohibitive. Houseman (owner) also stated that it became financially impractical to level it and build from scratch due to the foundation issues. If the person that will be living there would like to buy it someday their financial situation plays a role also. As an investment, this seemed to make the most sense from a practical standpoint.

Maki asked if it was designed or intended to be used as a short-term rental and Ashby answered it would not as her mother would be living there while helping with childcare.

Wietek-Stephens asked if there was room up on the bluff, after any needed excavation, if there any access from the back street to create a passable driveway so the house could be on top of the bluff. Ashby stated she thought that would be very

tight. She also stated they had thought of that also but there would be too many steps in the winter to climb and there would be a big expense with this.

Throenle stated that there is an issue with the topography of this parcel. He commented that building into the hill would also require some sort of barrier or retaining wall to prevent the hill from collapsing. Angeli commented it would be out of the budget.

Wietek-Stephens commented she had advocated for the tearing down of a structure last month that the Zoning Board had before them and it got voted down, but that was a waterfront property which was longer and deeper, and it was more feasible for someone who wanted a desirable lakefront property. She stated this property is narrow and shallow and it has a significant topographical feature that would impact the usability, both on the top or by the road. In her opinion it could either get turned into park land or the Zoning Board could do something with it where it is at.

Angeli felt the existing plans would be a viable solution for this property. He felt it would improve the neighborhood and people have expressed to him they are looking forward to this project being done.

Wietek-Stephens asked the Zoning Board if they had any arguments that it would be contrary to the public, after looking at the requirements that need to be met, to issue a variance.

Charboneau asked if there were any comments from any of the neighbors and Throenle commented that he had not received any.

Wietek-Stephens also asked if it would be contrary to the public health, safety, welfare, or the spirit of the *Zoning Ordinance, Master Plan*, or any other land use plans.

Maki answered that an argument could be made as it does not comply with the current setback or comply with the size for houses. Charboneau felt they are increasing the size to the floor space which makes it more conforming and it would not be pushing any more into the current setback.

Wietek-Stephens assumed the non-conformity on the front lot line was there to provide visual distance between the road and the house for aesthetics and to allow the use of the right of way for the road and utilities; this is not encroaching in the right of way as there is still a three foot front setback. She agrees this is not enough and normally she would argue to set the structure back into the hill but given how narrow the lot is and the steepness of the hill, she is having difficulty recommending that.

Jennings commented if the city did need to get within three feet of the house and excavate, it would not be collapse due to the way the footings are set up now.

Wietek-Stephens asked if the plans for changing the crawl space would make this more dangerous and Jennings told her they would be continuing with a similar crawl

space on both sides. There would be a five and ½ foot extension added on the west side and a five foot extension on the east side so they can still meet the side setbacks and allow for a small amount of green space in the back of the property.

Wietek-Stephens asked if the side setbacks will be met and Jennings answered they were trying to meet as many setbacks as they can; the only two not met would be the square footage and the front setback.

Wietek-Stephens stated this plan would not displace, inhibit, or have any type of deleterious effect on a permitted or conforming structure, either on a subject premises or nearby premises.

She does not see any negative effects it would have on surrounding properties or structures. It would also not increase any existing non-conformity such as setbacks.

She stated Maki thought it would increase the nonconformity by making it wider; she feels the non-conformity is based on the distance from the lot line and adding on side to side would not increase the non-conformity as long as it did not come forward. Charboneau agreed.

Wietek-Stephens stated it reduces the non-conformity of it being a tiny house as much as practical for the site in her opinion. She would like the Planning Commission to discuss the tiny house issue. Milton stated it was the first time he heard of them, but he would talk about it getting included in the future.

Wietek-Stephens felt this would not result in any new non-conformity which did not exist prior to the proposed change.

Will meet all reasonable conditions which might be imposed by the Zoning Board of Appeals such as removing the shed that is on the lot line.

Board Decision

Wietek-Stephens motioned, Milton seconded, after conducting a public hearing and review of the Staff Review and Analysis for Variance Request ZB 19-82 for parcel 52-02-251-004-00 at 218 West Fairbanks Street, Marquette, MI, the Zoning Board of Appeals finds that the request demonstrates the standards pertaining to the granting of non-use variances after having reviewed the five standards specifically and hereby approves Variance Request ZB 19-82 with the following findings of fact:

- a) Strict enforcement of the Zoning Ordinance would cause practical difficulty because relocating the existing dwelling elsewhere on the lot to remove the front setback requirement would prove to be an unreasonable hardship given that the lot is too narrow to allow for a big enough house to justify digging into the hill.*
- b) Granting the variance would not be contrary to the public interest because there has been no public comment in opposition. It lessens the non-conformity for the tiny house issue by increasing the size of the tiny house. It removes a blighted property.*

- c) *There are circumstances unique to this property including the dwelling being built before any zoning regulations and therefore never having been compliant with the 25 foot front setback. The hill is quite steep, the lot is narrow making the property nearly unusable for a standard sized structure.*
- d) *The variance request is not due to the actions of the applicant but is the result of adopted government regulation after the property was purchased and the dwelling was built.*
- e) *Approval of this variance request is contingent on the removal of the shed which is within the side setback.*

Maki interjected to ask how the off-street parking would be dealt with as he felt one could not be in the right of way. The Zoning Board discussed this and felt there could be parking in the right of way if it was off the street.

Wietek-Stephens asked if this was a requirement in the Township and Maki stated he felt there needed to be two parking spaces for each dwelling. Charboneau stated this was an existing structure, not a new build, with a provision for another parking area being made. He feels this is an improvement to the parking situation.

Maki stated one car would be under the parking area but asked where a second vehicle would be parked. Angeli stated the other vehicle could park directly behind the other car. Wietek-Stephens stated with a dwelling of this size, one car would not be an unreasonable expectation.

Samantha Ashby (applicant) interjected and told the Zoning Board that currently two cars would not fit due to the lean to and where the shed is currently situated. Charboneau felt when the carport was built you would be able to park one car behind the other.

Wietek-Stephens asked if this was a regulatory requirement that two cars be parked off the right of way? Maki stated to look up off street parking in the Zoning Ordinance. Throenle put the document up on the screen and upon review it was confirmed that two parking spaces were needed.

Wietek-Stephens asked if it was prohibited to park in the right of way overnight. This was not confirmed. Maki stated there still needed to be two spaces and Angeli stated there were, one under the carport and one behind it.

Wietek-Stephens stated, for the record, that there were two parking spaces off street as long as it was permissible to park in the right of way. Maki commented that one car could not be parked behind the other. The rest of the Zoning Board felt it was OK to do this. Maki asked how the one car would get out, Wietek-Stephens answered they would have to be asked to move. Charboneau stated the Zoning Ordinance did not state they had to be parked side by side.

Maki stated it would be common sense to have them side by side and Wietek-Stephens commented she had lived in many houses where she had to ask

people to move their vehicle. Throenle commented that there were many residences in the Township that do not provide side by side parking.

Wietek-Stephens commented if side by side parking was a requirement, she would agree that it would be issue for the Zoning Board of Appeals to look at. She asked Throenle to look for this. He answered he was looking and did not see anything regarding side by side parking, just the minimum amount of parking spaces provided.

Wietek-Stephens amended her motion to add that this variance is contingent upon the removal of the shed and meeting the applicable parking regulations.

Wietek-Stephens asked Milton if this would still be seconded with the new language. Milton felt one was able to park in the right of way as it extends to the property line. Wietek-Stephens agreed but felt the need add the amendment due to the possibility of it being a requirement as it could create a new non-conformity.

Throenle commented in relation to side by side parking, there were eight notes associated with the parking table in the Zoning Ordinance, Section 8.1 and all are pertaining to residential units of five units or more. It also states, “with the exception of residential housing of four units or less”. He does not see any notes regarding side by side parking.

Maki stated he would second the motion with the condition of meeting the applicable requirements for parking.

Vote: Ayes: 4 Nays: 1 (Maki) Motion Carried

Jennings asked if he needed to resubmit the drawing. Wietek-Stephens stated only if there is a parking requirement that is not met with the current plan. She asked Throenle to check on the parking and get back to the applicant.

VIII. Public Comment

Mark Maki, 370 Karen Road – Questioned why meetings were at 5:30 instead of 7:00.

Public comment closed at 6:55 pm.

IX. Township Board Member/Planning Commission Member Comments

Mark Maki (Board representative) – Questioned the Planning and Zoning report that stated the Planning Commission discussed an appeal process for site plan reviews. Asked if there were minutes regarding this discussion. Throenle stated there was. Maki felt the issue was site plans appeals, under the ordinance, come to the Township Board. He asked Throenle if the discussion at the Planning Commission was about a proposed change to put it to the Zoning Board of Appeals. Throenle commented yes but it had not gone any further.

He also asked Throenle if there was a time frame on the Sign Ordinance review. Throenle stated the agenda for the Planning Commission was set meeting to meeting but is full for the next two months.

Kendall Milton (Planning Commission representative) – Stated he will bring up the small houses at the next meeting.

Dale Throenle (Zoning Director) – Reminded the Zoning Board to set their clocks back on Saturday. No meeting for the Zoning Board of Appeals in November.

X. Informational Items and Correspondence

A. Township Board Minutes – 09.09.19

B. Township Newsletter – October 2019

Adjournment

Wietek-Stephens adjourned the meeting at 7:03 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary