

<p style="text-align: center;"><b>YANKEE SPRINGS TOWNSHIP ZONING BOARD OF APPEALS MEETING</b></p> <p style="text-align: center;"><b>Tuesday, November 12, 2019 7:00 PM Yankee Springs Township Hall 284 North Briggs Road, Middleville, Michigan 49333</b></p> <p style="text-align: center;"><b>MINUTES</b></p>	<p><u>MINUTES</u> Page 1 of 6 ZBA 11/12/19</p>
<p>Meeting called to order at 7:00 PM by Dave VanHouten, Acting Meeting Chairman.</p> <p><b>Roll Call:</b> Present: Dave VanHouten (Vice Chair), Ron Heilman- (Secretary), John Frigmanski, Jim Courtney (Alternate), Michael Boysen (Alternate).</p> <p><b>Absent with Notice:</b> Jacob Welch, Pat Jansens.</p> <p><b>PLEDGE OF ALLEGIANCE</b> –</p> <p><b>Present:</b> Rebecca Harvey, Professional Planner</p> <p><b>Staff Present:</b>, Sandy Marcukaitis, Chuck Biggs- Constable</p> <p><b>Visitors:</b> 8 - not including staff present.</p>	<p><b>CALL TO ORDER</b></p> <p><b>ROLL CALL</b></p> <p><b>PLEDGE</b></p>
<p><b>REPORTS FROM REPRESENTATIVES:</b></p> <p><b>Planning Commission:</b> Pat Jansens was not present at tonight’s meeting. (Absent with Notice).</p> <p><b>Board of Trustees:</b> There is not a Trustee representative from the Board at this time.</p>	<p><b>REPORTS FROM REPRESENTATIVES</b></p>
<p><b>APPROVAL OF MINUTES:</b></p> <p>Motion by Heilman with support from Frigmanski to approve ZBA meeting minutes of October 8, 2019 as presented. All ayes. MOTION CARRIED.</p>	<p><b>APPROVAL OF MINUTES:</b></p>
<p><b>PUBLIC COMMENT: NONE</b></p>	<p><b>PUBLIC COMMENT</b></p>
<p><b>NEW BUSINESS:</b></p> <p><b>ZBA 19-11-12 Parcel ID 045-006-00 A request by Ron &amp; Renee Rodenhouse for a 36’ setback on the lakeside and 10’ on the Roadside for the property at 702 Perch Cove Ct.</b></p> <p><b>Motion to Open Public Hearing by R. Heilman with support from M. Boysen at 7:04 p.m.</b> All Ayes. MOTION CARRIED.</p> <p>D. VanHouten noted that eight (8) of nine (9) neighbors (within 300’) signed a letter of approval of the variance request of Ron &amp; Renee Rodenhouse. Mr. Rodenhouse noted that the one signature missing was for a property that was just sold, and they didn’t have information on the new owner.</p> <p>D. VanHouten also noted that two alternates were on the board.</p>	<p><b>ZBA 19-11-12 Parcel ID 045-006-00 702 Perch Cove Ct.</b></p> <p><b>OPEN PUBLIC HEARING</b></p>

Mr. Rodenhouse presented their request. Home was built in 1950. Problem: a cottage, two places to the north, built in 1940's was built two feet from road and 86' from the water line. That skews the setbacks to 52'. The buildable area (without variance) resembles a bowling alley. A sketch was distributed. Restrictions would put Rodenhouse behind his neighbor hindering his view of the lake "something this code is trying to protect," commented Rodenhouse. An aerial and side view photo was distributed as well. Also noted was the curve of the shoreline. Rodenhouse thanked the ZBA and those who came out to look at the property.

Ron Heilman, ZBA, asked Mr. Rodenhouse what he was doing now that was different from the last request. (Variance was requested a year ago and denied). (Rodenhouse was not present last year at the ZBA meeting due to a church meeting.)

R. Harvey, Professional Planner, commented that the rear setback standard is 10 feet - last year they were considering the front setback. Rear yard setback is not needed. R. Harvey commented that it does enlarge the buildable area which was considered last year as well.

R. Heilman referred to the lot owned by the Rodenhouse's across the street and asked if they would be having another garage over on the other side of the road. Rodenhouse commented that what was drawn was legal the way it is per Eric Thompson, PCI.

R. Heilman asked if the 36' counted the deck. Rodenhouse replied, "No." Rodenhouse commented that it is to the lakeside corner of the lot to the post that is holding up the porch.

R. Harvey commented that the setback would be measured from any part of the building including the deck.

Ben DeKleine, builder of DK Homes, commented, "You're talking about the current cottage, not the future cottage."

B. DeKleine commented, "I know on paper, it looks like there's 35' x 55' but it's not really a good buildable- you don't just build a house to the shape. It doesn't work well....We're not trying to build a large house. We want a reasonable house that can fit nicely on the lot."

Comments from audience: NONE

*Motion to Close Public Hearing by Heilman with support from Courtney at 7:15 p.m.*  
All Ayes. Motion Carried.

**Dave VanHouten read the Practical Difficulty Test. (Standards follow.....)**

**(Test provided by R. Harvey, Professional Planner)**

**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).**

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MOTION TO CLOSE  
PUBLIC HEARING

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).

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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.*

#### BOARD DELIBERATION TOOK PLACE

Discussion took place on the Planning Commission and the ZBA's request to look at the front yard (waterfront) setback average.

R. Harvey commented for the record, "... to say the PC has not been responsive,... that's suggesting that you are disagreeing with the PC. And whether you disagree with the Planning Commission or not, it is not at issue; because you don't have a role to agree or disagree. As they do not with you... It's not your job to talk about the reasonableness of the standard. In addition to that, I might add, ...that Yankee Springs has a lot of 25' setback standards as a minimum. That is extremely low compared with other lake communities; that is a very low waterfront setback. The standard itself is a minimal standard. The averaging approach is designed to meet all sorts of objectives. One is building alignment, and so to grant relief all the time is never going to achieve that objective.

But aside from the specific requests, I can't stress enough that it's not the ZBA's job to solve the problem of the applicant, or to offer a reasonable solution. It is the job to see if a particular request or some version of that request, because you have the ability to say, we think you are asking for more than you need. But what you are in a position to say is to identify when a situation is such that it meets the standards of your variance criteria. That without it, they can't build anything. That without relief of something, the lot is unbuildable. You are going to come across some standards like that... But that's not real, right? You remember you have to add 15 feet, because they're showing a 25' setback. ... But that's a good point,...so when you get to 'Are there other reasonable options available?' it is reasonable for the ZBA say, is this a legitimate buildable area, not for

what the applicant wants to do, but is this, unless they get relief of something, 10 feet, two feet, is it unbuildable? Because you can't render a lot unbuildable. So there's a line in the sand... That's a far cry from how can we help the applicant do what he wants to do. That's not your job. Actually the job of the applicant is to comply with the standards. So they're supposed to be figuring out how to fit on their lot within the standards and only where it's totally unreasonable for them not to, do they appear here. It's a different way of looking at it."

Discussion took place on the plans of the project and the lot dimensions. Elevation/grade was noted as well.

The Board worked through each standard (#1 – 6) listed above.

*Motion by Frigmanski with support from Heilman to deny the variance request (of 702 Perch Cove Ct.) due to the ZBA's decision a year ago, nothing has changed, with recommendation that applicants see the Planning Commission. ROLL CALL VOTE: Boysen: No, Courtney: No, Frigmanski: Yes, Heilman: Yes, VanHouten: No. Yes: 2, No: 3. MOTION FAILS.*

*Motion by Boysen with support from Courtney to approve variance request citing application of Standards #3, 4, 5 and 6 of the Practical Difficulty Test. ROLL CALL VOTE: VanHouten: Yes, Heilman: No, Courtney: Yes, Boysen: Yes, Frigmanski: No. Yes: 3, No: 2. MOTION CARRIED.*

Prior to the next variance request hearing, R. Heilman had questions for R. Harvey regarding pergolas. Heilman noted that he had looked through the ordinance. The only thing found was a gazebo with a roof, in section 12.7.5.b.1. Further discussion took place.

**2. ZBA 19-11-13 Parcel ID 08-16-070-56-00 A request by Lisa Pishevar of 3104 Elmwood Beach for a variance to construct an addition to a single family dwelling failing to meet the front yard setback.**

Motion by Heilman with support from Frigmanski to open public hearing at 8:13 p.m. All ayes. MOTION CARRIED.

*Please Note:* A Letter from a Neighbor was sent to ZBA in approval of project (from S. Kothawala from 3088 Elmwood Beach).

**Mr. Kamran Pishevar** presented the variance request - noting that the ZBA is probably going to get a lot more of applications such as the Pishevar's (for pergolas). Mr. Pishevar noted the problem they are trying to solve is really an 'Act of God' – a strong wind (because of the peninsula) coming across the lake. The Pishevar's are trying to find a solution that works and the only practical solution is a pergola. The Pishevar's have looked into other options such as: porches – neighbors have lost porches. Large umbrellas which have ended up in the neighbor's yard, awnings do not work, porch would obstruct neighbor's view. Metal (store bought) pergola was mangled on the first night of installation. Trees will take 30 years to achieve shade that is desired. Pergola planned will not obstruct views.

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**Motion to Deny  
Variance Request**

**Motion to Approve  
Variance Request**

**ZBA 19-11-13 Parcel  
ID 070-56-00 3104  
Elmwood Beach for a  
variance.**

**OPEN PUBLIC  
HEARING**

**Mr. Pischevar** went thru the Practical Difficulty Test standards and voiced his thoughts as to their application to his request. Noting for brevity, Mr. Pischevar commented #s 3, 4, and 6 would apply.

**Marjory Richards**, neighbor on Elmwood Beach, has lived there since 1991 - and owned cottage before - since 1969. M. Richards noted the wind would take down her awning. She has also tried using a tarp with stakes. M. Richards commented that she doesn't have any issues with the Pischevar's project.

**MOTION by Heilman with support from Boysen to Close the Public Hearing at 8:25 p.m. All Ayes. MOTION CARRIED.**

*ZBA members went through the Practical Difficulty Test- Each individual standard.*

**BOARD DELIBERATION-** took place

*Motion by Courtney with support from Heilman to approve the variance request of a pergola (only) at 3104 Elmwood Beach based on the following Standards of the Practical Difficulty Test: #3) Having the right to enjoy as commonly enjoyed by other properties in the same district and #4) variance is not detrimental to adjacent properties. In addition, requesting the Planning Commission to review pergolas in regard to the ordinance.*

**ROLL CALL VOTE: Frigmanski: Yes, Boysen: Yes, Courtney: Yes, Heilman: Yes, VanHouten: No. Yes: 4, No: 1. MOTION CARRIED.**

**OTHER SUCH BUSINESS/OLD BUSINESS:**

**Such other business as may properly come before the Zoning Board of Appeals.**

**M. Boysen** request getting clarity from the PC regarding pergolas not being specifically stated in the ordinance. Further discussion occurred with R. Harvey regarding definitions of structure(s). Boysen commented to have PC exempt an arbor or pergola as a structure- or not being subject to setbacks.

It was noted that J. Frigmanski will be attending the next Planning Commission meeting on Thursday, November 21<sup>st</sup>.

**D. VanHouten** mentioned filling out applications for the ZBA if someone's term is expiring. R. Harvey commented that terms are staggered.

**Ron Heilman** would like ZBA members to consider taking on classes for Master Citizen Planner certification. Ron H. will look into it, get information and contact everyone individually. Online classes are an option.

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CLOSE PUBLIC  
HEARING

MOTION to  
APPROVE  
VARIANCE  
REQUEST at 3104  
Elmwood Beach

**ADJOURNMENT:**

Motion by Boysen with support from Heilman to adjourn at 8:54 p.m. Approved by all. MOTION CARRIED.

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Ron Heilman, ZBA Secretary

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Janice C. Lippert, Township Clerk

Respectfully submitted by:  
Deb Mousseau  
Recording Secretary, 11/12/19

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**ADJOURNMENT**