

**YANKEE SPRINGS TOWNSHIP
ZONING BOARD OF APPEALS
MEETING**

**Tuesday, July 9, 2019
7:00 PM
Yankee Springs Township Hall
284 North Briggs Road, Middleville, Michigan 49333**

MINUTES

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Meeting called to order at 7:00 PM by David VanHouten, Acting Meeting Chairman.

Roll Call: Present: Dave VanHouten (Vice Chair), Ron Heilman- Secretary, John Frigmanski.

PLEDGE OF ALLEGIANCE –

Absent with notice: Jake Welch, Pat Jansens.

Also Absent with notice: Eric Thompson- PCI

Present: Rebecca Harvey, Professional Planner

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

Visitors: 10 - not including staff present.

REPORTS FROM REPRESENTATIVES:

Ron Heilman mentioned the quorum situation at this evening's meeting. There are three ZBA voting members present. (Full board is five members). In order to have a variance granted or denied, all three (3) votes would have to be the same or unanimous either way. If it is a split vote, it is considered "no action". R. Heilman commented that Mr. DeKleine had a choice. R. Harvey added that the meeting could be postponed to a pre-dated meeting and a published notice would not be required.

Mr. DeKleine chose to proceed with the variance request at tonight's meeting.

Planning Commission: Pat Jansens not present this evening.

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

APPROVAL OF MINUTES:

Motion by Heilman with support from Frigmanski to approve ZBA meeting minutes of June 11, 2019 as presented. All ayes. MOTION CARRIED.

PUBLIC COMMENT: NONE

NEW BUSINESS:

ZBA 19-07-07 Parcel ID 115-016-00 Property address 11620 Barlow Lake Rd., Middleville, MI 49333.

- a. A request by Ben DeKleine of DK Homes for a variance to construct a single family dwelling failing to meet the side yard setback.

Mr. Ben DeKleine presented his request.

CALL TO ORDER

ROLL CALL

PLEDGE

REPORTS FROM REPRESENTATIVES

(No formal reports)

APPROVAL OF MINUTES

PUBLIC COMMENT

NEW BUSINESS

Request of variance for Parcel #ID: 115-016-00
Address: 11620 Barlow Lake Rd.

R. Harvey commented that the ZBA has asked the question and the Planning Commission is currently dealing with setback requirements of lots that may be irregular in shape such as a lot that is wider at one end (pie-shaped).

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Open Public comment period: by D. Van Houten at 7:18 p.m.

Judy Doherty – 11635 Barlow Lk Rd. wanted to confirm that the proposed building will not impose on the access. R. Heilman confirmed that the building will not impose upon the access.

Open Public Hearing
at 7:18 p.m.

Kami Weninger- 11614 Barlow Lake Rd. Mrs. Weninger noted that she and her husband came in on Friday to look at the plans at the township office. Wording of the request concerned both Mr. and Mrs. Weninger, “I’ll be forced to go further out into the lake if I don’t get the sides,” noted Mrs. Weninger regarding the wording. K. Weninger commented that they are not against beautiful homes being built close to them, they are just concerned that the building is set back properly and not encroaching too far over.

Ben DeKleine, Builder, and resident of – 11626 Barlow Lake Rd., clarified his wording and noted that he was very mindful of both properties next to the proposed project (regarding waterfront setback/view), and he just wanted to make the sure the new building fit in and the extra width would help.

Letters read into the record by D. VanHouten, Acting Chair:

Paul & Kami Weninger, 11614 Barlow Lake, Middleville, MI – letter noted that they were undecided and need further information.

“Barlow Lake Neighbors” (wishing not to be identified) – in disapproval of project.

Ben DeKleine – noted, (regarding alley way), “You would be gaining 10 feet of space by allowing me to build. If I can’t build, the cottage may stay there. So, there’s more space if I do build and get it. There’s another 1.7 feet if I have to adhere to the setback rule. All I’m asking for is a little bit of favor for that variance. If the new house goes up- there’s more space. If the cottage stays, it’s probably more of a hindrance.”

Close of Public Hearing by D. VanHouten: 7:27 p.m.

Close of Public
Hearing at 7:27 p.m.

BOARD DELIBERATED using standards of Practical Difficulty.

D. VanHouten read the following 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 this evening.

D. VanHouten commented that he feels it would be an improvement to the lot, and will help the alley; it makes sense and doesn't think its right to hold it up for the Planning Commission to make changes to that rule.

R. Heilman commented "We have a responsibility to the community to try to work with people and try to make things happen. And sometimes ordinances are a little bit of a problem and we're not talking about a lot of space ... about 1.7 feet on each side..." Heilman noted that at the higher end of the property it is only 30 feet. Heilman commented that the Planning Commission should be notified regarding this case and Section 12.4 which needs to be addressed. Heilman also noted that the Planning Commission is busy, and maybe work on 12.4 would not be able to get done right away.

R. Harvey commented, "As you know the board makes its decisions on a review of the criteria. Just reminding you that you are not required to find positive or negative on all the criteria. You're free to place weight, if you will, on the criteria. And so if you have a finding in the affirmative on several and finding of negative on the others, if you feel that those in the affirmative have more weight, certainly that would support a finding for approval as an example. So I wanted to make sure that that was clear and Ron's comments notwithstanding, I'd only remind for the record, that it is not the responsibility or authority of the board (ZBA) to try and make things work for applicants. What your responsibility is, your statutory authority is, you are the only body authorized to grant relief from the standards – and that part is true. That the responsibility rests with you, but that is why you have the criteria, because that establishes by law, the criteria or the parameters in which you are authorized to operate. But that's why it's nice to know that you can put weight on the criteria, and even if you only found one in the affirmative if you felt that overrode everything else, you could certainly use that as support."

Motion by Heilman with support from Frigmanski to approve the variance request for Parcel ID 115-016-00 based on the following Practical Difficulty Test criteria: #1) the practical difficulty of the property itself- the unique and physical nature of it, the size, not only the 30 ft. at the road going out, on a slow taper, but also the fact that the placement of house- the builder needs to follow the setbacks of the front and rear setbacks also. So it makes it a unique situation. #2) the condition of the property- we've only got, in Yankee Springs, two places where we have this kind of a situation with a huge drop- 30 ft.- so the general and recurrent nature is not regular and really doesn't need an amendment to the zoning ordinance, in that respect. And the variance will not be significantly detrimental to adjacent property (#4)-it will actually enhance the alley way and create more space for emergency vehicles and for the public to use that property because the building right now sits in that alley way. ROLL CALL VOTE: Heilman: Yes, Frigmanski: Yes, VanHouten: Yes. Yes: 3, No: 0. MOTION CARRIED.

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Motion to approve variance request.

OTHER SUCH BUSINESS/OLD BUSINESS:

Discussion occurred regarding working on Section 12.4 by the Planning Commission. Definition of waterfront lot width is really what has to be clarified according to R. Harvey.

OTHER SUCH BUSINESS

M. Englerth thanked the ZBA, noting that he has been a builder for over 40 years. Englerth also noted that Yankee Springs is probably the most unique community you could find.

Frank Fiala commented on being overdue for a Joint Meeting, also noting that two of the last few Planning Commission meetings were cancelled.

M. Englerth asked ZBA members to pick a date and give him a call for the Joint Meeting.

ADJOURNMENT: D. VanHouten officially closed the meeting at 8:01 p.m.

ADJOURNMENT

Approved by:  Date: 10/8/19
Ron Heilman, ZBA Secretary

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

Respectfully submitted by:
Deb Mousseau
Recording Secretary, 7/9/19