

<p style="text-align: center;">YANKEE SPRINGS TOWNSHIP ZONING BOARD OF APPEALS SPECIAL MEETING Wednesday, September 21, 2022 6:00 PM Yankee Springs Township Hall 284 North Briggs Road, Middleville, Michigan 49333</p> <p style="text-align: center;">MINUTES</p>	<p style="text-align: center;"><u>FINAL MINUTES</u> Page 1 of 8 ZBA Special Meeting September 21, 2022</p>
<p>Meeting called to order at 6:01 PM by Jake Welch</p>	<p style="text-align: center;">CALL TO ORDER</p>
<p>Roll Call: Present: Dave VanHouten, Ron Heilman, John Jerkatis, Jake Welch, John Frigmanski</p>	<p style="text-align: center;">ROLL CALL</p>
<p>Staff Present: Sandy Marcukaitis, Rob Heethuis, Frank Fiala, Brad Williams, Tom Mawson</p>	
<p>Visitors: 24</p>	
<p>PLEDGE OF ALLEGIANCE</p>	<p style="text-align: center;">PLEDGE OF ALLEGIANCE</p>
<p>INQUIRY ON CONFLICT OF INTEREST:</p>	
<p>Mr. Welch inquired if there are any conflict of interest with the board regarding tonight's request. There are none.</p>	<p style="text-align: center;">CONFLICT OF INTEREST</p>
<p>NEW BUSINESS:</p>	
<p>ZBA 22-009-20 PARCEL ID #08-16-065-012-00. 10896 Shady Lane, Middleville, MI 49333. A request by builder, KLH Custom Homes, for property owners, Edward and Kathy Wilson, for variance relief from the setbacks established by section <i>12.4 "Required Setbacks"</i>.</p>	<p style="text-align: center;">ZBA 22-009-20 PARCEL ID #08-16-065-12-00 Request by KLH Custom Homes</p>
<p>The subject site is approximately .205 acres in size. The property is currently zoned Gun Lake Residential Lake Front (GLRLF) and the applicant is requesting relief to allow for the construction of a single-family residence that fails to meet the required side yard setbacks. 5' side yard setback is required – 4'4" is provided.</p>	
<p><u>Motion by Heilman with support from Jerkatis to open the public hearing and allow the applicant to speak at will and that the public has the opportunity with a 3-minute limit.</u> All ayes. MOTION CARRIED</p>	
<p>Edward Wilson thanked the Board for setting the time for the special meeting. He said it was never their intention to push the limits on the footprint of their house but he is now requesting a variance with regard to the side set back from 5' to 4'4". When they were given their building permit as requested, they did not know that they needed a variance but the plans were measuring from the foundation of the home rather than the roof overhang. Had they known they would have requested a variance at the beginning or would have considered making the house smaller. There was another case on Gun Lake this summer where a variance was granted in a similar situation where the house was partially built before the need for the variance was discovered. He stated that there was approval given for the mechanicals to be located where</p>	

they are. They have received approval to put up a fence so that will reduce the visibility of the mechanicals and reduce the sound. A sound study was conducted and the noise of the air conditioner unit when running was at 70 decibels which according to OSHA is a normal conversation tone. He provided documentation to the Board.

Kathy Wilson stated that they have several neighbors who are here in support of the variance as well as those who have sent in letters and emails.

Public Comment (limited to 3 minutes):

Shashin Kothawala (3088 Elmwood Beach): He has experience with building and mentioned that the plans for construction were approved. There was a foundation inspection that was also approved. He feels that equitable estoppel is relevant in this case. Also mentioned that other cases have been approved and the Board should bear that in mind.

Kay Simpson (3482 Elmwood Beach): She expressed her opinion that their intention was never to go over the requirements and never to upset the neighbors.

Alp Onder (10946 Shady Lane): He feels that there will be no hardship at all if this variance is granted and that the Board approves it.

Brian Marcukaitis (10978 Hermitage Pointe): supports the variance that is being requested.

Eric Hannapel (3458 Elmwood Beach): He and his wife support the Wilsons completely; they did nothing wrong.

Nicole Smith (11043 Hastings Point Rd): She supports the request for the variance.

Steve Echtenaw (10997 Gun Lake Road): Their family cottage is two doors down from the Wilsons. His brother asked him to speak on behalf of the Wilsons and believes that putting up the fence should end the problem. He and his wife and brother all support the Wilsons' request.

Tom Hopkins (10910 Shady Lane): He supports both neighbors. He supports the variance but he also understands the difficulty caused to the Grants. He would encourage the Board to look at the rule that measures to the roof rather than to the building.

Julie Fox (11066 Hastings Point Rd): She spoke in support of the Wilsons. They followed what they believed were the rules and regulations and did nothing wrong. She has worked with PCI on 5 different projects this year and feels they have been wonderful. This was a mistake and it doesn't appear to be a big deal.

Deborah Grant (10888 Shady Lane): The builder had conversation with her and said he had built homes on Gun Lake and never had a problem. She said the builder told her that the property owner had shifted everything toward the side of her house to allow for more access on the other side. She believes that the correct measurement should be 10" for the variance, not 8". She also stated that the zoning ordinance says the variance has to meet three criteria, not one as the attorney said. She feels it is contrary to public interest, crowds her property and will affect the property value. There are no conditions peculiar to the property. Also stated that a literal interpretation of the rules will not deprive the owner of their rights if they had built a proper house. She feels that that this was a result of actions by the property owner and builder.

Cost should not be a factor in the decision and if the issue can be fixed it should be fixed. The zoning administrator erroneously approved the permit. This does not keep the owner builder from having to comply with the zoning ordinance since it is the builder's job to know the requirements. It is not the place of the ZBA to approve a variance to avoid a potential lawsuit.

Letters and emails in support of granting the variance as requested were read into the record from the following:

- Brian and Amy Echtenaw (10922 Shady Lane)
- Alp and Kathy Onder (10946 Shady Lane)
- Cathy and John Woodrow (10968 Shady Lane)
- Ann Hannapel Nolan (3494 Elmwood Beach)
- Dorothy Flaska (3610 Elmwood Beach)
- Santo and Julie Landa (3432 Elmwood Beach)
- Tom Hopkins (10910 Shady Lane)
- Paul and Leslie Nowaczyk (10784 Shady Lane)
- Katherine Erlich (10876 Shady Lane)
- Timothy Jewel (10820 Shady Lane)
- Wayne Bowman
- Fred and Diane Ignatovich (10810 Shady Lane)
- Adam How (10920 Shady Lane)
- Elias Amash (10992 Shady Lane)
- Blake Crocker (attorney for Shashin Kothawala)

Copies of all letters are attached to the minutes.

Motion by Heilman with support from VanHouten to close the public hearing. All ayes.

MOTION CARRIED

Jake Welch read the Practical Difficulty Standards and each standard was considered. The ZBA discussed the request as they went through each standard.

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). *Mr. VanHouten commented that it was unique because they did obtain the permit and they relied upon that. They obtained a survey and the home was built because of the issuance of the permit.*

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). *Mr. VanHouten stated that the side yard setback requirements are the minimum necessary. Because the house was already constructed, denial of the variance would require that the house be redesigned and/or demolished in part. Mr. Welch stated that setbacks in that vicinity*

**PRACTICAL
DIFFICULTY
STANDARDS**

range from zero to ten feet.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood. *Mr. VanHouten stated that similar setbacks are common throughout the densely developed lake areas and through the township. If granted the side yard setback variances will still provide at 4'4" side yard on each side of the house.*

5. That, in granting a variance, the ZBA is ensuring that the spirit of the Zoning ordinance is observed, public safety secured, and substantial justice done (not to 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). *Mr. Heilman commented that they built in good faith on their lot and they had approval to build figuring that the 5' setback was from the foundation and it is from the overhang. The owners and the builders were in compliance with what they were told they could go ahead and build, so #6 would fall into the practical difficulty for the owners.*

Attorney Kaufman read three additional items from Section 20.8 of the Zoning Ordinance into the record and requested the Board discuss each item.

1. The alleged hardships and/or practical difficulties are exception and peculiar to the property of the person requesting the variance and result from conditions which do not generally exist throughout the township. *Mr. Heilman stated that the property is not unique. Mr. Jerkatis stated that the primary responsibility of the board is to allow a variance to the ordinance if the granting is not in conflict with the original concept of the ordinance. What intent of the ordinance is affected by granting this variance? Mr. Welch stated that the intent is for separation between properties. Attorney Kaufman said that generally the intent underlying setbacks is for fire department access and to allow air and light between structures. In the previous six points one of the items discussed is ensuring that the spirit of the Zoning ordinance is observed, public safety secured, and substantial justice done and so it was discussed if the spirit of the ordinance would be observed if the variance was granted. That is also one of the standards in the zoning ordinance so it may need to be discussed again as that's often a very similar standard for a dimensional variance request. Mr. Jerkatis commented that the overhang being 20' in the air will not hamper traffic or anything like that. Mr. Heilman said that the intent is for access, fire protection, public safety, and a number of items like that. Mr. VanHouten mentioned the desire for green space – each property has to have at least 50% green space. Attorney Kaufman asked if there were any further comments regarding #1, that the alleged hardships and/or practical difficulties are exception and peculiar to the property. Mr. VanHouten stated his belief that it would be a real challenge to find a new house that was built in the township that had this situation that occurred. He built it by the permit and the situation that we're in now is extremely unusual. Mr. Jerkatis agreed.*
2. The alleged hardship and/or practical difficulty which will result from a failure to grant a variance would include substantially more than mere inconvenience or mere inability to attain a higher financial return. *Mr. Welch stated that it is more than an inconvenience to rebuild the home. Mr. VanHouten commented that the homeowner did not cause the problem, builders are seeing what is happening, and PCI is more than aware of the ordinance so this will not happen a lot. It seems unreasonable for*

the homeowner to suffer because of the error.

- 3. That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Ordinance, the individual hardships that will be suffered by failure of the ZBA to grant a variance, and will not be contrary to both the public purpose and general intent and purpose of the Zoning Ordinance. *Mr. Welch believes the ordinance was written as discussed and that granting this variance would not be detrimental to those reasons.*

Motion by Heilman with support of Jerkatis to approve the variance of 8” from the 5’ setback required due to practical difficulties #1, that the builders and the owners constructed the home with approval and felt that they were building within their right and were not in error; and #6 it was not the fault of the homeowners or the builders, so with those two I would motion that we give them the variance of 8 inches. Discussion: Mr. VanHouten requested we add additional points to the motion and asked Mr. Heilman if he would be willing to restate his motion. Attorney Kaufman suggested that everything stated should be combined into one motion if possible.

Motion by Heilman rescinded. He would like to have the specific measure of 8” included in the motion. Mr. Welch stated that the 4’4” measurement covers that.

Motion by VanHouten with support of Heilman that we grant the side yard setback variances on both side yards of the property at 10896 Shady Lane, Middleville, (5 feet required, 4 feet 4 inches provided) with the following condition: the applicant and/or property owners shall not expand or alter the house hereafter except in full compliance with the Township Zoning Ordinance; this decision is based on the findings of facts contained herein; the applicant built the newly constructed home in reliance on a building permit issued by the Township’s building official; the practical difficulty is not self created; the grant of two side yard setback variances will be in keeping with the spirit of the zoning ordinance, as the side yards will still have a setback of 4 feet 4 inches on each side which is not uncommon in the densely developed lakeshore areas of the Township; that the grant of the variance will do substantial justice to the applicant, who relied on a building permit and to the adjoining neighbors, by still requiring a side yard setback of 4 feet 4 inches; the ZBA received correspondence from several neighbors in support of the variance request; and all resolutions or portions thereof inconsistent with the provisions of this resolution are hereby rescinded. Mr. Jerkatis commented that granting this variance does not inhibit the intent of the ordinance with regard to trafficking from the front to the back of the property. **Roll Call Vote:** *VanHouten: yes; Heilman: yes; Jerkatis: yes; Welch: yes; Frigmanski: yes.*

Yes: 5, No: 0. MOTION CARRIED

ZBA 22-009-21 Formal Interpretation of zoning ordinance. A request by Township Zoning Administrator Eric Thompson of PCI for a formal interpretation of Section 12.4.2.c "Side Yard Setbacks".

Mr. Thompson stated that over the past six years he has always treated air conditioners, generators, gas meters, etc., as appliances rather than structures so they have been allowed in the setback area. A challenge has been raised that this interpretation may not be correct based on the language of the section C for side yard setbacks. He has interpreted the items listed (belt

MOTION TO APPROVE
VARIANCE

ZBA 22-009-21 Formal
Interpretation of Zoning
Ordinance

courses, sills, pilasters, bay windows, approved signs, window mounted air conditioners, cornices, chimneys, fireplaces, boiler flues and similar features) as physical features of a structure and that supporting appliances are not. The decision tonight is not in regard to a specific property but will cover how the ordinance will be applied throughout the township going forward. Mr. Jerkatis asked if the placement of those items should be considered with regard to inhibiting traffic around the building since it was discussed that the main intent of the side yard setbacks is to allow access for security purposes. Mr. Thompson stated that there is space between these items and since side yards are allowed to be completely fenced, he doesn't feel these items inhibit travel between the homes any more than fencing does.

Attorney Kaufman read her legal opinion into the record of the points for the Board to consider when there is a request for interpretation of a zoning ordinance.

- The ZBA shall first look at the plain language of the zoning ordinance for guidance. If the ordinance text is ambiguous the ZBA should clarify with the Zoning Administrator the historical understanding and application of the ordinance (which Mr. Thompson just explained).
- The Michigan Supreme Court has held that if a zoning ordinance's language is ambiguous, a court should give great weight to the ordinance interpretation as applied over an extended period of time by the staff and/or by the Township. That's *Macenas v Village of Michiana 433 Mich 380*, a Michigan Supreme Court case. Essentially a court should accord great weight to a historical zoning ordinance interpretation in determining the meaning and similarly, when making an interpretation, the ZBA should "reasonably construe the zoning ordinance with regard to the objects sought to be attained (the purpose) and the overall structure of the zoning scheme".
- So, you need to look at the plain language of the ordinance, and if that is not clear, if it is ambiguous, then you're going to look at the historical interpretation of that ordinance in the municipality over a period of time and again, give great weight to that historical interpretation and application.

Motion by Heilman with support from Jerkatis to open it up to public comment for 3 minutes per person. All ayes. MOTION CARRIED

Deborah Grant (10888 Shady Lane): Mrs. Grant expressed her concerns with both the placement of the Generac generator and the air conditioning unit and the noise associated with them. The keyword in the ordinance that talks about the setback is "structure" and the generator is not in compliance. Her opinion is that the variance was granted for 8" but the measurement is 10". She does not understand how the occupancy permit was granted before the variance was approved. She feels that the units could be moved anywhere on the property rather than under her bedroom window if they wanted to be a good neighbor.

Ed Wilson (10896 Shady Lane): The mechanical items are in the same alley and the Grant's AC unit is only 10' away from the Wilson's unit.

Shashin Kothawala (3088 Elmwood Beach): The utility items are placed for practical purposes based on construction. It is an appliance that people choose to have. He feels that Mr. Thompson is interpreting the ordinance correctly.

Jim Grant (10888 Shady Lane): With regard to what is the "intent" of the ordinance, does anyone feel that the intent was for all the mechanical structures to be right up to the property

line? The equipment is 12" from the property line. How does anyone get through if these items are in the setback? He expressed concern about CO2 gases being brought into the home. He states that it was incorrect to give an 8" variance when the property line actually requires 10". It is his opinion that the Board does not know what is in the ordinance.

Kay Simpson (3482 Elmwood Beach): Generators are appliances and they don't run often. There are all sorts of precautions for carbon monoxide and a carbon monoxide monitor inside the home will catch if there are any issues. There has to be some place to put these items since the homes on the lake don't have basements. Please consider what is being said here tonight and nothing has been done maliciously.

Kathy Wilson (10896 Shady Lane): It appears when you look at our house that there is additional space on the west side. There is a 5' easement between our property and Tom Hopkins property. We had to adhere to that easement so the east side of the home is where the utilities are and where these need to be. There are generators all around the lake. The air conditioner units are very close together and our unit is a very quiet model.

Paul Novacek: When considering this ordinance, there are places on our road where the generators are right on the property line. They hardly ever run. As far as intent a utility item like this would not be as much of a hindrance as a fence.

Motion by Frigmanski with support from VanHouten to close the public hearing. All ayes.
MOTION CARRIED

Board deliberations took place.

Mr. VanHouten asked for clarification on whether or not a permit has to be issued to replace a generator or AC unit. An electrical or mechanical permit needs to be issued but not a zoning permit. Residents have been allowed to replace units without concern for the setback requirements. Mr. Thompson stated that he has never had a complaint regarding a generator. Putting in generators is getting to be more and more common but there have been very few problems. VanHouten stated that the Fire Department will get into the yard as needed, regardless of an air conditioner unit or generator.

Mr. Welch read the subject portion of the ordinance into the record.

Section 12.4.2c: Setback Determinations: Setback distances shall be determined by measuring the shortest straight-line distance between the boundary line of a lot, parcel, or building site and the nearest impervious surface of a building or structure, including eaves, belt courses, sills, pilasters, bay windows, approved signs, window mounted air conditioners, cornices, chimneys, fireplaces, boiler flues, and similar features. Eaves troughs shall be an exception to this requirement and may project into the required side yard setback requirement.

Mr. Heilman stated that the setback rule has been applied to things such as sheds, garages, wood burner sheds, but the Board has not considered appliances or accessories, things like an air conditioning unit, a generator unit, flag poles, wren houses, etc. There is some ambiguity in the ordinance. Some updating and clarification of this is needed and it is intended that the Planning Commission will be addressing it. Per Mr. Frigmanski, the setback issue has been brought up to the Planning Commission and there is work to be done on it. There will hopefully be a joint meeting coming up and this should be put on the agenda to get it done. Mr.

VanHouten agreed that this is outdated and there's room for interpretation in the structure definition.

Motion by Heilman with support from VanHouten that we interpret the ordinance at present the way we have in the past and that we consider any structures such as sheds, garages, wood burning type sheds and that type of thing need to comply with setback ordinances, and that units, accessories, and appliances like air conditioners, generators, flag poles and wren houses are things that we have not considered in the past, and my motion would be that we continue interpreting the way we have and ask the Planning Commission to please get to it sooner rather than later as this particular piece of the ordinance needs some serious work.

Discussion: Mr. Jerkatis commented that any time that something is placed that blocks traffic and other people's property and since they are connected to the building, we need to consider them and since they are connected to the building why aren't they as much a part of the building as the eave trough. **Roll Call Vote:** Frigmanski: yes; Welch: yes; Jerkatis: no; Heilman: yes; VanHouten: yes.

Yes: 4, No: 1. MOTION CARRIED

OLD BUSINESS:

The ZBA asks that the Planning Commission be requested to recommend something with regard to the ordinance. The PC has to make the recommendation and the Board has to approve the decision and then the ZBA can apply it. Mr. Frigmanski confirmed that the PC has been asked and he will bring it up again. They will be reviewing this and also the ordinance regarding size of accessory buildings. These items will be discussed at the next PC meeting and at a joint meeting.

PUBLIC COMMENT (limited to 3 minutes):

Deborah Grant: Really interesting watching how the Board works. She stated that Larry Knowles told her when he was in Zoning, he always did consider the generator and the air conditioner units with regard to the setbacks. She expressed her dissatisfaction with PCI and how this was handled by the ZBA tonight and she will plan to discuss how to appeal it. The fact that so many people speak in favor of the Wilsons is not relevant. She stated that she has had personal problems with Mr. Wilson.

Mr. VanHouten spoke up in defense of Eric Thompson and PCI. It is not right to say that he does a horrible job.

ADJOURNMENT:

Motion by VanHouten with support from Welch to adjourn meeting at 7:32 PM. All ayes.

MOTION CARRIED.

Approved by:  Date: 10/11/2022
Ron Heilman, ZBA Secretary

Respectfully submitted by:
Betsy Frigmanski, Recording Secretary
September 22, 2022

FINAL MINUTES

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ZBA Special Meeting
September 21, 2022

**MOTION REGARDING
INTERPRETATION OF
ZONING ORDINANCE**

OLD BUSINESS

PUBLIC COMMENT

ADJOURNMENT

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Monday, September 12, 2022 6:02 PM
To: Sandra Marcukaitis; Mark Thompson
Subject: Fwd: Side Setback Relief Variance for Ed and Kathy Wilson

Sent from my iPhone

Begin forwarded message:

From: Brian Echtenaw <bechtinaw@gmail.com>
Date: September 11, 2022 at 3:05:08 PM MDT
To: Eric Thompson <ethompson@pcimi.com>
Cc: Ed and Kathy Wilson <kathedw@yahoo.com>
Subject: Side Setback Relief Variance for Ed and Kathy Wilson
Reply-To: Brian Echtenaw <bechtinaw@gmail.com>

Gun Lake Zoning Board,
The property owners residing at 10922 Shady Lane, (Brian and Amy Echtenaw and William E. Towne Trustee) 100' west of Ed and Kathy Wilson, have no issue or concern with the KLH Custom Homes and the Wilson's request for relief from the 5' side setback requirement to allow for a 4' 4" setback variance for the Wilson home at 10896 Shady Lane.
Brian and Amy Echtenaw
William E. Towne Trustee

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Monday, September 12, 2022 6:02 PM
To: Sandra Marcukaitis; Mark Thompson
Subject: Fwd: 10896 Shady Lane

Sent from my iPhone

Begin forwarded message:

From: Alp Onder <alponder61@gmail.com>
Date: September 12, 2022 at 8:21:36 AM MDT
To: Eric Thompson <ethompson@pcimi.com>
Subject: 10896 Shady Lane

To the Yankee Springs Township ZBA:

We are neighbors(10946 Shady Lane) to the above property and have no opposition to your granting the 4'4" set back variance to KLH homes and our neighbors Ed and Kathy Wilson. Feel free to contact us at 248-914-1462 if you have any further questions.

Alp & Kathy Onder

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Monday, September 12, 2022 6:02 PM
To: Sandra Marcukaitis
Cc: Mark Thompson
Subject: Fwd: Variance request 9/21

Sent from my iPhone

Begin forwarded message:

From: Cathy Woodrow <cwoodrow1@icloud.com>
Date: September 12, 2022 at 8:32:10 AM MDT
To: Eric Thompson <ethompson@pcimi.com>
Subject: **Fwd: Variance request 9/21**

Sent from my iPad

Begin forwarded message:

From: Cathy Woodrow <cwoodrow1@icloud.com>
Date: September 12, 2022 at 10:09:40 AM EDT
To: ewilson@summitpolymers.com
Subject: **Variance request 9/21**

TO: Gun Lake Zoning Board
RE: Variance request
FROM: Jon and Cathy Woodrow

We (Cathy and Jon Woodrow) are Gun Lake residence who live at 10968 Shady Lane Dr. We live approximately 250' west of the property asking for a variance. As neighbors, we have no issue or concern with KLH Custom Homes and the Wilson's request for relief from the 5' side setback requirement to allow for a 4'4" setback variance.

Sent from my iPad

I approve of the variance
for the Ed + Kathy Wilson
home on Shady Lake.

I have lived on Shady
Lake - 3494 Elmwood Beach
for 50 years. I have witnessed
and experienced many changes.

This is no fault of the
Wilson - please just be
neighborly and give them
a break!

Let's work together
as neighbors!

Kindly

Ann Hannahel Nolan

Thank You!

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 20, 2022 9:22 AM
To: Sandra Marcukaitis; Mark Thompson
Subject: FW: Ed Wilson's Property Setback Support

Another one.
Eric

-----Original Message-----

From: Dorothy Flaska <dotflaska@gmail.com>
Sent: Monday, September 19, 2022 8:52 PM
To: ewilson@summitpolymers.com; Eric Thompson <ethompson@pcimi.com>
Subject: Ed Wilson's Property Setback Support

To the Gun Lake Zoning Board,

My name is Dorothy Flaska and I've lived at 3610 Elmwood Beach Road for over 25 years. I've known Kathy & Ed Wilson, the latter of whom grew up on the very property he just built his beautiful new home on, for many years and I would like to express my full support for their request for relief from the 5' side setback requirement to allow for a 4'4" setback variance. Anyone who lives on this beautiful but highly populated lake should understand the dynamics of close property lines & I am very hopeful that the GL Zoning Board recognizes that, too. I am sending this communication so that you know I have no issue or concern with Ed and the KLH Custom Homes request.

Thank you so much for your consideration of my endorsement. I'm very hopeful that you will support their request, too.

Sincerely,
Dorothy Flaska

Sent from my iPhone dot

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 20, 2022 11:06 AM
To: Sandra Marcukaitis; Mark Thompson
Subject: FW: Wilson Residence

Another one.
Eric

From: santo gencollc.com <santo@gencollc.com>
Sent: Sunday, September 18, 2022 2:33 PM
To: EWILSON@SUMMITPOLYMERS.COM
Cc: Eric Thompson <ethompson@pcimi.com>
Subject: Wilson Residence

Dear Gun Lake Zoning Board,

Santo and Julie Landa of 3432 Elmwood Beach, Middleville Mi. do not have any issues or concerns with the new construction of the home on Shady Lane built by Ed and Kathy Wilson. The quality of which the home was built was first class with the utmost attention to detail and they made sure to maintain the integrity of the neighborhood.

I am all in favor of their minor request for the variance of 6" they are requesting. Their home is a wonderful addition to the Gun Lake Community and am quite baffled how the 6" from an overhang would cause this great family such grief. In any event the home is beautiful and does not need to be altered in any way

Santo Landa

Gen-Co
16025 23 Mile Rd.
Macomb, Mi. 48042
O-586-781-9092
C-810-499-4547

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 20, 2022 4:15 PM
To: Sandra Marcukaitis; Mark Thompson
Subject: FW: house variance

Another one.

-----Original Message-----

From: Thomas Hopkins <thopkin1@charter.net>
Sent: Tuesday, September 20, 2022 4:13 PM
To: Eric Thompson <ethompson@pcimi.com>
Cc: ewilson@summitpolymers.com
Subject: house variance

As a neighbor to the Wilsons we are very pleased with them as neighbors and the aesthetics of their new home. We have no issue with the request of KLH Custom Homes and the Wilsons for a setback of 4'4" in place of 5'. It is our hope that in the spirit of cooperation and neighborliness that this can be resolved to everyones satisfaction. It may be helpful in the future if the Township consider basing measurements on the foundation rather than roof lines as i believe most townships currently do. This may solve future issues before they exist.

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 20, 2022 9:05 AM
To: Sandra Marcukaitis; Mark Thompson
Subject: FW: ZBA 22-009-20 and ZBA 22-009-21 Community Comments

More Shady Lane correspondence.
Eric

From: Paul Nowaczyk <nowaczyp@yahoo.com>
Sent: Monday, September 19, 2022 10:16 PM
To: Eric Thompson <ethompson@pcimi.com>
Cc: Leslie Nowaczyk <lnowaczyk@yahoo.com>
Subject: ZBA 22-009-20 and ZBA 22-009-21 Community Comments

Zoning Board of Appeals Members,

I am contacting you in regards to the public hearing for 10896 Shady Lane for the interpretation of side yard setbacks ordinance. As Shady Lane home owners, East of Wilsons, my wife Leslie and I are both in support for this variance in favor of the Kathy and Ed Wilson. If the decision should come to a difficult unbiased impasse we propose a decision in favor of the Wilson represents the highest probability for serving the overwhelmingly vast majority of the surrounding community.

Thank you for your attention,
Paul & Leslie Nowaczyk

Eric Thompson & Yankee Springs Zoning Board
ethompson@pcimi.com
Yankee Springs Twp
284 N. Briggs. Rd
Middleville, MI 49333

9/13/22

Dear Eric Thompson & Yankee Springs Zoning Board,

Please take this letter into consideration for the upcoming Zoning Board hearing on September 21st, 2022. In reference to parcel id #08-16-065-012-00 10896 Shady Lane Middleville, MI (Kathy & Ed Wilson). As a close neighbor with our home located at 10876 Shady Lane Middleville, we would like to make you aware that we are in full support to grant this request for variance relief. This setback will not cause our family and/or property any hardship. We have no issue or concern with the KLH Custom Homes and the Wilson's request for relief from the 5' side setback requirement to allow a 4'4" setback variance.

Sincerely,



Katherine Ehrlich
10876 Shady Lane
Middleville, MI 49333
646-515-9065

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 13, 2022 6:17 PM
To: Sandra Marcukaitis
Cc: Mark Thompson
Subject: FW: Variance Relief from Setbacks

More correspondence.

-----Original Message-----

From: Timothy Jewell <TJewell@eaton.bank>
Sent: Monday, September 12, 2022 12:02 PM
To: ewilson@summitpolymers.com
Cc: Eric Thompson <ethompson@pcimi.com>
Subject: Variance Relief from Setbacks

This message was sent securely using Zix(r) <<http://www.zixcorp.com/get-started/>>

To Whom It May Concern:

Relating to the pending setback variance request for 10896 Shady Lane, Middleville, MI 49933 (#08-16-065-012-00), the property owners of 10820 Shady Lane, Middleville have no issue with granting the request to KLH Custom Homes and the Wilsons.

The home in question is already built and it is our understanding that an error was made by someone other than builder or homeowner. We do not believe granting a 8" setback variance will lessen the quiet enjoyment of any neighboring property.

Tim Jewell

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Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 13, 2022 10:12 PM
To: Sandra Marcukaitis; Mark Thompson
Subject: Fwd: Wilson and KLH homes variance request

More correspondence.

Sent from my iPhone

Begin forwarded message:

From: Wayne Bauman <wbauman63@gmail.com>
Date: September 13, 2022 at 6:34:23 PM MDT
To: ewilson@summitpolymers.com, Eric Thompson <ethompson@pcimi.com>
Subject: **Wilson and KLH homes variance request**

Dear Zoning Board,

This email is in support of Ed and Kathy Willson's and KLH Homes request for a variance in the property line set back for their newly constructed home. I have owned property on Gun Lake for over 30 years (4700 Cascade Lane, Delton, MI 49046) and in a similar situation would support any of my neighbors should they require just an additional 6" of setback variance. The variance that the Wilson's are requesting will not impact property values or views for the affected neighbor and should be granted.

Respectfully,

Wayne Bauman

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Tuesday, September 13, 2022 5:25 PM
To: Sandra Marcukaitis
Cc: Mark Thompson
Subject: FW: Variance - 10896 Shady Lane, Middleville

More correspondence in support of the Wilson request.
Eric

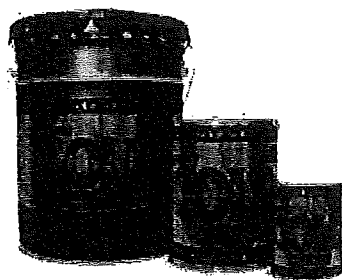
From: Diane Ignatovich <dignatovich@superiorstoneproducts.com>
Sent: Tuesday, September 13, 2022 1:54 PM
To: ewilson@summitpolymers.com; Eric Thompson <ethompson@pcimi.com>
Subject: Variance - 10896 Shady Lane, Middleville

Whom it may concern:

We, Fred & Diane Ignatovich, the property owners at 10810 Shady Lane, Middleville have no issue or concern with the KLH Custom Homes and the Wilson's request for relief from the 5' side setback requirement to allow for a 4'4" setback variance.

Thank you,

Diane Ignatovich
Superior Stone Products
8580 Byron Commerce Drive SW
Byron Center MI 49315
616.583.0171
800.493.5111
www.superiorstoneproducts.com



OFTEN IMITATED. NEVER DUPLICATED.

Sandra Marcukaitis

From: Eric Thompson <ethompson@pcimi.com>
Sent: Wednesday, September 14, 2022 6:32 PM
To: Sandra Marcukaitis; Mark Thompson
Subject: Fwd: Wilson residence

More Shady Lane correspondence

Sent from my iPhone

Begin forwarded message:

From: adam howe <adamhowe78@yahoo.com>
Date: September 14, 2022 at 2:16:01 PM MDT
To: Eric Thompson <ethompson@pcimi.com>, ewilson@summitpolymers.com
Subject: Wilson residence

Dear Gun Lake zoning board,

This is Adam Howe property owner of 10927 Shady Lane Dr Middleville MI I have no issue with KLH Homes and the Wilson's request for relief from the 5' side setback requirement to allow for the 4' 4" setback variance.

Sent from Yahoo Mail. [Get the app](#)

RECEIVED SEP 15 2022

September 12, 2022

Yankee Springs Township Zoning
284 N Briggs Road
Middleville, MI 49333

Re: Variance for 10896 Shady Lane, Middleville, MI 49333

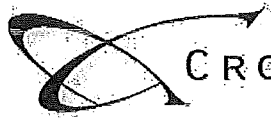
To whom it may concern.

I am writing regarding the variance request submitted on behalf of Ed & Kathy Wilson, who reside at 10896 Shady Lane, Middleville, MI 49333. My name is Elias Amash and I live at 10992 Shady Lane. I am in full support of the issuance of this variance.

If you have any questions, please contact me at 616-299-7195 or email me at elias@gripontools.net.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elias Amash', with a long horizontal flourish extending to the right.



CROCKER & CROCKER, P.C.
ATTORNEYS AT LAW

BLAKE D. CROCKER, JD, LL.M.
blake@crockerlawfirm.com

September 18, 2022

Yankee Springs Township Zoning Board of Appeals
284 N. Briggs Road
Middleville, MI 49333

Re: 10896 Shady Lane, Middleville, MI 49333.
PPN: 08-16-065-012-00.

Dear Board Members:

We are the attorneys for Shashin Kothawala, the owner of property located on Elmwood Beach Road, who is a concerned resident. Mr. Kothawala has requested that we write to you in support of the variance request by Mr. and Mrs. Wilson with regard to the above-referenced property.

It is our understanding that the plans were properly approved by PCI acting as the Township building official and a building permit was issued to the Wilsons and in reasonable reliance upon the issuance of the permit they proceeded with complete construction of the home. The Township has received an objection stating the roof overhang is encroaching upon the applicable 5 foot side yard setback by less than 1 foot (6 to 8 inches). The plans were approved and the home has been completely finished built but they are awaiting issuance of the occupancy permit.

It is our understanding that PCI has admitted it erred in the official performance of its duties for the Township and the permit was approved and that this situation is analogous to the variance request made and approved by the Board on July 23, 2022.

One issue we felt was important for the Board to consider was the issue of equitable estoppel which we have described below. The reasonable reliance by the home owner in constructing the home, even if the permit was issued in error, equitably estoppes the Township from now requiring that the homeowner to "comply" with the setback requirements of the zoning ordinance. Especially when the encroachment involves less than a 1 foot encroachment by the eaves and not the foundation. The foundation is within the applicable 5 foot setback.

The Michigan Court of Appeals has held the City of Douglas was *equitably estopped* from interfering with a homeowner's construction of his home when the City official had approved the building permit. Equitable estoppel arises when: (1) a party, by representation, admission, or silence, intentionally *or negligently* induces another party to believe alleged facts, (2) the other party justifiably relies and acts on this belief, and (3) the other party will be prejudiced if the first party is permitted to deny the existence of those alleged facts. *AFSCME*

CROCKER & CROCKER

Attorneys at law

Yankee Springs ZBA
September 18, 2022
Page 2 of 2

Int'l Union v Bank One, NA, 267 Mich App 281, 293; 705 NW2d 355 (2005) (quotation marks and citation omitted). *Equitable estoppel may be an appropriate remedy where one party has changed its position in reasonable reliance on a governmental mistake*. See, e.g., *Pittsfield Twp v Malcolm*, 375 Mich 135, 147-148; 134 NW2d 166 (1965) (estopping a municipality from enforcing its zoning regulations against a kennel owner who was erroneously issued a building permit after he had relied on the permit and built a kennel). *Kalkman v. City of the Vill. of Douglas*, No. 306051, 4 (Mich. Ct. App. Sep. 20, 2012)

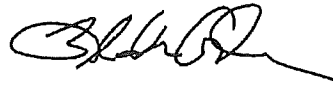
Needless to say, given the entire home has been constructed in good faith reliance upon the building permit granted by the Township official, even if in “error” due to negligence of the Township official, Michigan law prohibits the Township from now enforcing its zoning regulations.

It seems clear in this case that the Township should grant the variance for the same reasons set forth in its meeting of July 23, 2022 as well as Michigan law which recognizes that the Township is now estopped from enforcing its own zoning ordinance due to the reasonable reliance of the homeowner on the granting of the permit.

Thank you for your attention to this matter.

Yours truly,

CROCKER & CROCKER



Blake D. Crocker