

ISABELLA COUNTY  
ZONING BOARD OF APPEALS  
December 19, 2007

Room 225  
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held December 19, 2007 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Tom Courser, Gordon Gilchrist, Roy Ranck,  
Craig Schripsema

MEMBERS ABSENT: None

SUPPORT STAFF PRESENT: Timothy Nieporte, Community Development Director  
Mike Zalewski, Planner/Zoning Administrator  
Brandy Freed, Recording Secretary

The meeting was called to order by the chair at 9:00 a.m.

APPROVAL OF AGENDA

The agenda was approved as submitted.

PREVIOUS MINUTES

The minutes of the September 19, 2007 meeting were approved as submitted.

Mr. Schripsema stated that it would be beneficial if the minutes were sent out when they were completed even if there is no meeting the following month.

PUBLIC COMMENTS

None Heard.

NEW BUSINESS

- A. Variance Request #07-07: Stephen McGiveron is requesting a variance to construct an 18' x 24' accessory building 7'1" from the front property line and 4' from the side property line. The minimum front setback in the Lakes Area Residential (L-R) District is 35' and the minimum side setback in the L-R District is 8'. The property is located at 8897 Westview Drive in Section 20 of Gilmore Township. Parcel # 08-090-00-029-00.

Mr. Zalewski explained that the owner was advised in a violation notice dated October 5, 2007 that he would have to obtain the necessary permits for the structure. Upon application for the permits it was determined that the structure does not meet the required setbacks. Thus the permit was denied. Mr. McGiveron subsequently applied for the variance. Mr. McGiveron has indicated to our office that this garage is being built in the same location as the old garage that was tore down. However, once the old garage was tore down, it lost its nonconforming status. Thus any new construction, in this case

another garage, would have to meet the present ordinance requirements. Staff has visited the site and would encourage the board members to do so as well.

Mr. McGiveron stated that he believes that a special condition does exist on his property because the setbacks are based upon lots that are 15,000 sq ft. His lot is about 4,000 sq ft. In case #92-05, a variance granted to Jim and Eleanor Welton, the lot size was also a problem. These lots were platted in 1954, and are small. There is an existing house there that has been there since 1952, and the existing septic system and dry well prevent moving the garage back, the new garage was put where the old one was, because that is the only place it could go. The driveway and propane tanks are to the side. He also explained the garage was only replaced because the old one was rotted and the doors did not work anymore. In case #99-05, location was an issue, Mr. McGiveron quoted from the minutes, "the location prevents the owner from meeting setback requirements." If the garage was set back 35' it would be on top of the house. Some lots have garages by the road. Mr. McGiveron stated that he was only asking for a variance to replace a structure that already existed and when the cement was poured it was poured 2' farther back. No special privilege would be given because the garage is replacing one that already existed. Similar variances have been granted in this area such as Kelsey, Grinn, Welton, and Freeman. Mr. McGiveron quoted Mr. Nieporte from the minutes of case 04-12, stating that Mr. Nieporte "did not feel that the board would be giving special treatment because others have had variances in the area and more would be needed due to the size and shapes of the lots.

The Chair opened the public hearing at 9:10 a.m.

Mr. Jeff Grinn of 2541 Sundance Ln. stated that he supported this variance because it was a garage in disrepair, now it is a new structure and a benefit to the neighborhood.

The public hearing was closed at 9:10 a.m.

Mr. Couser stated that the lot is small, but everyone else in that area has the same problem so this one does not stand out among others for this reason.

Mr. McGiveron stated that the 35' foot setback requirement is based on a lot size of 15000 sq ft, but his lot is only 4000 sq ft.

Mr. Courser stated that everyone around is in the same situation. When the property was developed in 1954, it was developed for recreational use and now people want to use these as year round properties.

Mr. McGiveron stated that everyone does have small lots, but everyone also has accessory buildings that are closer than the 35' setback, these buildings include garages, attached garages, and Mr. Freeman's house which is 7' from the road. Nothing special is being asked for, but everyone else has these types of buildings and none of them meet the setback requirements.

Mr. Courser stated that when replacing a structure you have to come as close to compliance with the ordinance as possible, this is how the house variance was granted.

Mr. McGiveron explained that the house is on a different lot, the garage sets on the next lot over.

Mr. Courser stated that for example if the board would have denied the variance for the house this would have been denying the applicant a privilege everyone else has.

Mr. McGiveron stated that if this variance is denied it would be denying him of the privilege that everyone else in the area has. The garage can not be moved back because of the septic system and it can not be moved closer to the propane tank.

Mr. Gilchrist asked how wide the right of way is.

Mr. McGiveron stated that it is a private road and he does not know how wide the right of way is.

Mr. Gilchrist asked if a new foundation was put down.

Mr. McGiveron stated that it is just on a slab.

Mr. Gilchrist asked if Mr. McGiveron put the slab there.

Mr. McGiveron stated that there was a slab there.

Mr. Gilchrist asked if a new slab was put in.

Mr. McGiveron stated that was correct, the old slab was cracked.

Mr. Nieporte asked Mr. McGiveron to explain for the record why he built the garage without obtaining any permits.

Mr. McGiveron stated that he did not think it was an issue, because he was just replacing a building, putting it in the same spot as the old building.

Mr. Nieporte asked what the size of the new building was.

Mr. McGiveron stated that it is the same as the old building; they had an excavator take out the old slab and lay sand for new one also, a neighbor came and took the old building. The guy that poured the new concrete poured it 2' further back than the original slab.

Mr. Ranck stated that the building could be turned sideways.

Mr. McGiveron stated that if the building was rotated it would be on the side lot line.

Mr. Ranck stated that there is 18' on the side.

Mr. McGiveron explained that the driveway is there.

Discussion was held about using the building for a garage.

Mr. McGiveron stated that the building is intended to be for storage, it is not intended to park a car in.

Mr. Grinn stated that turning the building 90 degrees would put the building closer to the propane tank.

Mr. Schripsema stated that if the building was turned you would have 8' on each side and then you could get 13' from the road and change where the door is located.

Mr. Courser stated that even if the building was turned, a variance would still be needed. He would be 6' farther from the road and 6' closer to the property line.

Mr. Zalewski stated that it would leave 13' to park in front and he would still be requesting a front setback variance.

Mr. Grinn stated that now if someone wanted to park in the garage a vehicle might not fit.

Mr. McGiveron stated that when he built his house he had to put in hookups for a washer and dryer, but has no intentions of using them. They were required because if the house was sold, others might want to have them. In the case of the garage if the property is sold, new owners may want to use this building to park their vehicles in.

Mr. Courser stated that the board has to look at the property not the owners.

Mr. McGiveron stated that he believes he has shown that no advantage is being given to him over anyone else in the area because others are closer to the road and they didn't have to turn their buildings. This garage needs to be in this spot because of placement of other things on the property.

Mr. Wynes stated that many of the other buildings were there before zoning enforcement, others might have been given a variance and still others might not have gone through the zoning process. If the law says the setback is 35' and a variance is granted for 7' without a physical feature on the property the zoning laws mean nothing.

Mr. McGiveron stated that many of these were built recently.

Mr. Wynes stated that the board has to look at the individual parcels; they are not concerned with old cases by other zoning boards.

Mr. McGiveron stated that if the variance is denied, it would deprive him of a right that everyone else in that area has; based on variances that have been granted in the last 10 years.

Mr. Ranck stated that those people that come in for variances very seldom get exactly what they were asking for. He also stated that Mr. McGiveron never came in for a variance; he just built where he wanted to build, but that is not fair to others who have gotten a variance before they began building.

Mr. Nieporte stated that the requirements of the ordinance have to be justified to the board.

Mr. Ranck stated that the eave overhang is about 6”.

Mr. Schripsema asked if Mr. McGiveron built the garage.

Mr. McGiveron stated that he had some other guys build the garage he did not have a builder.

Mr. Courser stated that the board needs to look at this as if there is nothing built yet. He also explained that there have been others, in these situations that have had to tear down their buildings. He also explained that Mr. McGiveron would not be denied the use of his land because an accessory building is optional and he has been granted a variance for the cabin.

Mr. McGiveron stated that even though there have been recent variances granted on neighboring properties.

Mr. Courser explained that those may have been granted by a different board, they now have 2 members on the board. Procedures on how variances are looked at have changed.

Mr. Schripsema explained that every property is different and they do not have all the information before them on those other properties.

Mr. Nieporte explained that if the building is turned, you would potentially gain 6’ in front making the setback 13’.

Mr. Grinn stated that currently a car can be driven into the driveway so it is off the road. If the building is turned the driveway will be blocked and you can not pull a car in as far and it will be hanging out into the right of way.

Mr. Gilchrist stated that vehicles could be parallel parked.

Mr. Courser explained that if the building was rotated there would still be 12’ between the property line and the building.

Mr. Nieporte stated that the board can not design a plan for the applicant, they need to decide if the applicant has demonstrated that section 22.04 (a)(b)(c) of the ordinance has been met.

Mr. Schripsema stated that the applicant has not demonstrated (a)(b)(c) to the board.

Mr. McGiveron asked what conditions he has failed to met.

Mr. Courser explained that he only has his personal opinion, but the board needs to act as one unit and to do this an answer would be given by calling a motion.

Mr. McGiveron stated that if he rotated the garage it would give him a smaller variance, but would he then met meet all the requirements, because others have gotten these types of variances before.

Mr. Ranck stated that Mr. McGiveron is not asking for exactly the same variance as other applicants have asked for.

Mr. McGiveron stated that he is asking for the same as other because the building is closer to the road and the side lines than the current setbacks allow. That is what everyone has; others are closer to the road right of way.

Mr. Wynes explained that there has to be something physically impossible or difficult on the property to make it a special condition or circumstance on the property. There is nothing on the property such as a sink hole or a creek on the property. Because the size of the property is too small for what the property owner wants to do does not constitute a special condition.

Mr. McGiveron stated that this was exactly the reason in past cases for granting a variance.

Mr. Wynes explained that the board is not concerned with past cases.

Mr. McGiveron stated that the reason that one variance was approved was because, "the lot contains 6,420 sq ft of area which is less than the 15,000 sq ft area required by the zoning ordinance." He also explained that his lot is only 4,000 sq ft and has a house, propane tank and septic system that have all been there and this would be a special circumstance.

Mr. Courser explained that all the requirements have to be justified; they have to justify all three, not just one. This is a small lot, but there is nothing that forces you to move the building from one side to the other. Also building an accessory building is an option, it is not required. There are other garages in the area, but there are also neighbors that do not have garages.

Mr. McGiveron stated that all the cases he brought in were all approved. He also explained that he will be leaving not knowing why he failed to get this variance, if that is indeed the case. He also stated that he wants to know what he needs to do in order to get this building done.

Mr. Courser stated that this is does not seem to be the minimum variance. There are other ways to minimize the setback variances. If there is a garage door that opens to the road, the setback is 35', with 7' it would be hard to get a vehicle in and out without being in the right of way.

Mr. Nieporte stated that the board can not consider what this building will be used for. He also explained that some of the confusion on Mr. McGiveron's part might have been avoided if permits would have been obtained first. He also stated that Mr. McGiveron stated the building that was torn down was unusable, but the neighbor took it some where else and is using it.

Mr. McGiveron stated that Mr. Wynes mentioned sink holes and creeks as special circumstances, but none of this exists on any of the lots.

Mr. Nieporte stated that this case is unique to itself.

Mr. McGiveron stated that there is no sink hole or creek so in that case there are not special circumstances on his property.

Mr. Nieporte stated that the board does not know the circumstances of the property, the applicant must present this to the board, but now the board has been told there are no special circumstances in the land by the applicant.

Mr. McGiveron stated that this would mean that nobody can get a variance in this area because nobody can meet the requirement of special circumstances; yet identical lots have been granted variances for setback issues.

A motion was made by Mr. Schripsema, supported by Mr. Ranck, to deny variance request #07-07 as submitted based on the following justifications:

- The applicant has not demonstrated that he meets the conditions of section 22.04 (a)(b)(c)

Yes: Courser, Wynes, Gilchrist, Schripsema, Ranck.

No: None.

Variance request denied.

### STAFF COMMENTS

Mr. Nieporte stated that this is the last meeting for Mr. Courser and Mr. Ranck because statute requires board members to reside in townships that the county has zoning jurisdiction over. Mr. Wynes has 1 more term and his term will be up as well.

Mr. Zalewski stated that the meeting for January 2008 needs to be set

A motion was made by Mr. Gilchrist, supported by Mr. Ranck, to hold the Isabella County Planning Commission meeting on January 19, 2008 at 9:00 a.m. in room 225 of the Isabella County Building.

Yes: Courser, Wynes, Gilchrist, Schripsema, Ranck.

No: None.

Motion approved.

BOARD COMMENTS

Mr. Wynes asked Mr. Zalewski to inform the board of the case that was upheld by the court.

Mr. Zalewski stated that the Planning Commission had a case in which an 8' fence was to be built. The gentleman came before the Zoning Board of Appeal to get a variance for this fence and was denied. The gentlemen suited the Zoning Board of Appeals, but the judge upheld the decision based on the record, that being the minutes of the meeting. Last Thursday the Planning Commission took action to revoke this special use permit.

ADJOURNMENT

The meeting was adjourned by call of the Chair at 10:33 a.m.

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Roy Ranck, Secretary

Brandy Freed, Recording Secretary