

ISABELLA COUNTY  
ZONING BOARD OF APPEALS  
June 18, 2008

Room 225  
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held June 18, 2008 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

MEMBERS PRESENT: Jim Wynes, Craig Schripsema, Gordon Gilchrist, Kelly Bean, Howard Shively.

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.

The Pledge of Allegiance was recited by the board.

APPROVAL OF AGENDA

The agenda was approved as submitted.

PREVIOUS MINUTES

Mr. Shively stated that he had abstained from case #08-05, but it shows that he voted.

The minutes of the May 21, 2008 meeting were approved as amended.

PUBLIC COMMENTS

None heard.

VARIANCE REQUEST #08-06

Mr. Zalewski explained that Robert Barrett is requesting a variance to construct a 12' x 28' addition to an existing accessory building for a total building square footage of 1008 sq. ft. The maximum square footage of an accessory building on a lot without a principal building in the Lakes Residential district is 864 sq. ft. but shall not exceed 10% of the lot area. The maximum square footage of an accessory building that is allowed on this particular parcel is 700 sq. ft. The property is Lots 92 and 93 of the plat of Coldwater Lake Shores in Section 30 of Nottawa Township. In this case, the two lots combined are only 70' x 100' for a total of 7000 sq. ft. Thus

the maximum size of an accessory building on this lot is only 700 sq. ft. (10% of 7000). He has an existing 672 sq. ft. and is looking to add 336 sq. ft. for a total 1008 sq. ft.

Mr. Backus explained Lakeshore Drive is a private drive/easement. Lot 61 which contains the applicant's home is 4000 sq. ft. The home that sits on lot 61 is about 1200 sq. ft. The applicant would like to move the existing shed to lot 93. The garage on lot 93 is 1 – 2 ft from the lot line; the hope is that the applicant would be able to build a lean-to on this garage that would straddle the lot line of lots 92 and 93. It is understood that lot 92 and 93 are being combine because they are single owner, for purposes of determining square footage. The two lots are 7000 sq. ft. so 10% would be the 700 sq. ft. These are stand alone lots and lot 92 would support a building of this size and structure. If the applicant was entitled to build on lot 92, the variance that would be asked for would be to slide the building over rather than build a stand alone building. There are requirements that state that the 2 lots have to be looked at together. If this is the case, lot 61 should also be included, because they are all owned by the same property owner and they are all contiguous lots. The easement/private drive that divides the properties is a center line with an easement of 17 ½ ft. on each side. The private drive is privately maintained, the county does not do anything with the road. If the properties can be extended to the center line and combine lots 92, 93 and 61 then they would be allowed a building up to 50% of the lot size which would be 5500 sq. ft. If the variance is granted for the addition only 2200 sq. ft. would be used. These lots should be considered either singly or as one contiguous property. There are back lots in this area that have garages on them that take up the majority of the lots, certainly more than 10% of the property. By building a lean-to, it would maximize the green space on lot 92 and open space on lot 61.

The public hearing was opened at 9:14 a.m.

None heard.

The public hearing was closed at 9:14 a.m.

Mr. Gilchrist asked if there was a septic field on lot 93.

Mr. Barrett stated that there is a septic field there, but it is only used for the washing machine.

Mr. Shively asked if the drain field was on the elevated portion of the property.

Mr. Barrett stated that it is behind the existing structure.

Mr. Gilchrist stated that he had spoken with the neighbor to verify that Lakeshore Drive is in fact an easement; it is not a legal road.

Mr. Schripsema stated that Lakeshore Drive is not part of the properties because it is a platted easement.

Mr. Bean stated that the 3 lots can not be contiguous because Lakeshore Drive is platted.

Mr. Schripsema stated Lakeshore Drive is a separation for everyone to use for ingress and egress.

Mr. Bean asked what could be done if the lots were treated separate.

Mr. Nieporte stated that the lots are not contiguous. If the lots are looked at separately the 10% coverage is still there, so putting them together based on the requirements of the ordinance, you would still have 350 sq. ft. on each for a total 700 sq ft. If on one lot we have a 672 sq. ft. building and that lot is looked at individually, that would be a nonconforming building. If there were a different owner next door who owned individual lots they would under the ordinance be able to put up a 350 sq. ft. building. Because of the grandfathered state of the 672 sq. ft. building there would, on those two lots, be up to a total of 1022 sq. ft. of buildings. This is an issue anytime there is a nonconforming situation.

Mr. Gilchrist stated that if they were treated singly the applicant would be allowed a 350 sq. ft. building on lot 93.

Mr. Nieporte stated that if they were treated singly they would only be able to build an accessory building of 10% of the sq. ft. of the parcel which is 700'

Mr. Zalewski explained that these lots can not be treated individually, the existing structure is approximately 1 – 2' away from the lot line.

Mr. Nieporte stated that if 92 were sold, 93 would create multiple illegal nonconforming problems such as setback problems on the one side and the size. On average the building size in this area came out to 672 sq. ft.

Mr. Bean stated that it looks like the lots were platted before zoning was in effect. If someone lives out there they would need an accessory building that is about 1000 sq. ft. for storage.

Mr. Nieporte stated that it may not be an issue with regard to how this action is taken on this case. If there is a problem with the ordinance that is something that Planning Commission needs to deal with, such as increasing the size of accessory buildings. Circumstances have to meet the ordinance, and you as a board can make that criteria meet, and then a variance can be granted.

Mr. Bean stated that most accessory structures in the area do not meet the requirements.

Mr. Nieporte stated that according to the information that the board was given in their packets, most of the accessory structures in the area do meet the requirements, without adding together multiple buildings. This proposed building will be one of the largest out there.

Mr. Gilchrist asked where the 10% criteria came from. If the building meets the setback requirements what is the problem with allowing the property owner to add to his garage, it is not fair to the applicant or the board to hear these cases all the time? This problem needs to be addressed, the area is land locked, the street is not public and the owner is charged taxes out to the road.

Mr. Nieporte explained that the 10% restriction is used in the L-R district, not in the Ag districts.

A motion was made by Mr. Gilchrist to approve variance request #08-06 as submitted for a 12'x20' addition to the building on the lot 93 side.

Discussion was held on how action should be taken.

Mr. Gilchrist with drew his motion.

Mr. Backus stated that this is an old lot; the written plat does not reflect reality. The road way is either private or an easement that is maintained by the owners. The buildings that are on the back lots do not comply with the 10% requirement. The ordinance is keeping the applicant from using his property as others out in that area already have, denying Mr. Barrett the opportunity of using his property in a way that all the neighbors use their property. Common sense should dictate that this variance be granted. Combining all three properties together would make the Barrett's well with in the 50% rule.

Mr. Nieporte stated that if the board feels that the 3 parcels are contiguous there would be no variance needed. The board should not take action on a variance if it is agreed that the 3 parcels are contiguous, if you agree with that then the language in the ordinance needs to be found that is interpreted as such. The board has to determine whether lot 61 is contiguous to lots 92 & 93. Also the 50% would not count for a detached accessory building; it is still at 10%.

Mr. Backus stated that the accessory building is less than 1100 sq. ft. so it would still be under the required 10%.

Mr. Nieporte stated that the board may want to look into the issue further and clarify it before taking action.

Mr. Bean stated that both the 10% requirement and putting the parcels together is a problem and it may need to be looked into further.

Mr. Nieporte stated that yes, what the board needs to do to be able to make that interpretation is to get with Mr. Backus to see what language he is reading and how he is interpreting it. Then the board would have to make an interpretation on that portion of the Zoning Ordinance language. That interpretation would not be specific to that parcel; it would carry through and be for every lot. There is a question on the road in this case, so it would be very hard to make an interpretation today without the question to the road being answered.

Mr. Schripsema asked how the lots are looked at as far as tax purposes.

Mr. Backus stated that the lots are under one parcel number.

Mr. Nieporte stated that the lots are still labeled on the deed; they do have separate descriptions.

Mr. Shively asked if the variance that was denied recently was on a single lot, 35'x100'.

Mr. Nieporte stated that it was on 70'x100', two lots.

Mr. Gilchrist stated that that person did not meet setbacks.

Mr. Zalewski stated that he did meet setback requirements.

Mr. Shively asked if a lean-to was built as a separate lot, would that comply. He also stated that just sliding it over a bit and attaching it makes sense and the removal of the existing shed would make the best use of the property and would improve the area.

Discussion was held on making a motion.

A motion was made by Mr. Bean, supported by Mr. Gilchrist to approve variance request #08-06 based on the following:

- This is a small lot and the structure is not larger than any other in the area
- If not granted it would deprive the owner use of their property, while others have larger buildings
- This would give the property own no special privilege because others in the area are over the 10% requirement
- This is the minimum variance based on the list that was provided by staff
- The variance is in harmony and fits with other buildings in the area

Roll call vote

Gilchrist: Yes

Bean: Yes

Shively: Yes

Schripsema: No

Wynes: No

Variance approved.

#### STAFF COMMENTS

None Heard.

#### BOARD COMMENTS

Mr. Bean asked if the Planning Commission looks at the ordinance pertaining to those cases that are constantly coming before the board.

Mr. Nieporte explained that yes, the Planning Commission would look into the ordinance in cases such as these. There will always be these problems; the board will never get around it.

These issues are not unique to our area. These are issues that occur around lakes all around the state. A report was presented to the board at the beginning of the year showing how many of these types of cases that we have had.

Mr. Zalewski explained that there have only been 9 of these types of cases since 2003.

Mr. Nieporte explained that this issue has been brought before the Planning Commission, but they have many issues they are dealing with right now so it is not set as a top priority.

Mr. Bean stated that right now there is nothing the Planning Commission can do to make these cases go away. There are enough special circumstances around the lakes and this is the process to handle it.

Mr. Nieporte stated that he didn't see how this case today could have been approved, but it was. The applicant saying that it is a special circumstance because the lots are old and platted small is incorrect because, every platted subdivision is old and the lots are small.

Mr. Zalewski stated that if the board disagrees with the requirements of the ordinance, then variances should not just be granted, it should be brought to the Planning Commission level to change the ordinance.

Mr. Shively stated that he didn't hear any negative discussion prior to the vote. He also asked why Mr. Wynes and Mr. Schripsema why they had voted no on the variance.

Mr. Schripsema explained that the special conditions were not met in this case because all three lots are not contiguous in this situation. Nobody owns outside the lot line. The addition could have been smaller also.

Mr. Gilchrist stated that the board needs to get the legal definition of contiguous properties.

Mr. Nieporte stated that he got hung up on how the literal interpretation would deprive the property owner of rights commonly enjoyed by others. The right is to be able to have an accessory building. The property owner currently has an accessory building and he can build up to 700 sq. ft.

Mr. Wynes stated that he looked at the special circumstances and they were not there. The applicant wanted to build a structure that was larger than the rules allow, there was not a water feature for example that would restrict the applicant, so therefore, they did not show that there were special circumstances.

Mr. Shively stated that he was thinking if Mr. Barrett decided to sell lot 92, because it is a separate lot with nothing on it, the building that is on lot 91 would become an illegal nonconforming building. So they might end up with buildings on both lots and the fact that they wanted to combine these lots and make them look like the garage that is three lots up.

Mr. Nieporte stated that there is an assumption that the board would have granted a variance for 1', but that would have been difficult to do because the circumstances today are that he meets the setbacks because he has both lots. He further explained that a problem would be created that should not be created at all costs. He also stated that he does not agree with the road issue at all, there are many roads out there that are not maintained by the road commission and that does not make them private roads. That is a public right of way. Mr. Backus stated earlier in staff's office that there were issues with the road in the past because they were calling it private and blocking it off, legal action was taken and they were told they could not block it off because it is a public road.

Mr. Gilchrist stated that if a buyer were to buy the lot that is 35' wide it would not be buildable because there is a minimum setback of 30' total and 15' at least on one side.

Mr. Nieporte stated that this information is not hidden from the buyer; they just do not look into it before they buy property. The 10% requirement may need to be looked at by the Planning Commission, but what do we establish as that number if it is not 10%?

Mr. Schripsema stated that if the 10% requirement is going to be looked at then a survey should be conducted to see what other people in these areas would want.

Discussion was held on contiguous lots in regard to Wal-Mart in Clare.

Mr. Bean stated that when he looked at this case he added up all the sq. ft. and averaged them.

Mr. Schripsema stated that he didn't have a problem with the percentage, but he would not have voted for allowing the full amount.

Mr. Wynes stated that if a lot allowed for an 800 sq. ft. accessory building, and a 700 sq. ft. building is built on that lot, could another 700 sq. ft. building be built?

Mr. Schripsema explained that it is a total of all buildings, so only a 100 sq. ft. building could be built in addition to the existing 700 sq. ft. building.

Mr. Shively stated that he had thought that the shed was grandfathered. Could the applicant have built a 350 sq. ft. building on lot 92?

Mr. Nieporte stated no because the existing one is there, it does not need grandfathered because it is 672 sq. ft. The parcel that the applicant owns is 235'x100' which is 700 sq. ft.

Mr. Schripsema stated that a survey to the L-R districts should be conducted.

Mr. Nieporte stated that if there have been only 9 of these cases since 2003, is this enough to look into changing the ordinance.

Mr. Gilchrist asked if there was a resolution with the Amish and their barn

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Mr. Nieporte stated that the case is still being worked on.

Mr. Schripsema stated that the new article 14 was recommended to the Board of Commissioners for approval.

ADJOURNMENT

A motion was made by Mr. Gilchrist, supported by Mr. Schripsema, to adjourn at 10:28 a.m.

Yes: Schripsema, Gilchrist, Wynes, Bean, Shively.

No: None.

Motion carried.

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Craig Schripsema, Secretary

Brandy Freed, Recording Secretary