

ISABELLA COUNTY
ZONING BOARD OF APPEALS
December 17, 2008

Room 225
Isabella County Building

A regular meeting of the Isabella County Zoning Board of Appeals was held December 17, 2008 in room 225 of the Isabella County Building, 200 North Main Street, Mount Pleasant, Michigan.

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

MEMBERS ABSENT: Craig Schripsema.

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 9:01 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 on page 2 he was referred to as Ms.

The minutes of the October 15, 2008 meeting were approved as amended.

PUBLIC COMMENTS

None heard.

VARIANCE REQUEST #08-15

Mr. Zalewski explained that Mr. Warren Weaver is requesting a variance to allow an existing 28' x 56' home to remain 2' from the side property line. The minimum side setback in the Lakes Area Residential District (L-R) in which the property is located is 8'. The property is located at 4907 Penny Lane in Section 29 of Nottawa Township. In 1998 Warren Weaver requested and was granted variances to allow for his home to be constructed 4' and 5' from the two side property lines as depicted on his site plan. The home was constructed. In July of this year, our office received a complaint from the neighbor stating that he had the property surveyed and that the house was actually constructed too close to his property line. According to the original variance, the home was to be constructed 5' from the side property line that adjoins the two properties. The home was actually constructed approximately 4' from the property line. Mr.

Zalewski further noted that is measured from the foundation and not the overhang and at the time the variance was granted, the setbacks were measured from the foundation. A recent interpretation of the ZBA states that setbacks are actually measured to the closest part of the structure, including overhangs. Upon receipt of the complaint, our office sent Warren Weaver notice advising him of the different options to correct the situation. Warren had his property surveyed and he indicated that it confirmed the house was only 4' from the side lot line and not the required 5'. The options for him at this point were to move the house or apply for a variance. He has decided to apply for a variance to allow the structure to remain. With measuring from the overhang, the home is 2' from the side lot line and that is why the request is to allow the home 2' and not 4' from the side lot line. The other side property line is not in question as that side of the house was actually constructed further away than what was permitted with the variance.

Mr. Wynes asked if there was a grandfather situation in terms of the overhang vs. the foundation.

Mr. Nieporte responded that when construction took place, if the home was constructed to the proper setbacks and the ordinance changed after, then it would have been a legal non conforming structure. That could be a question for the prosecuting attorney.

Mr. Wynes stated that there was not a survey when the house was placed on the lot.

Mr. Warren Weaver stated that there was a mortgage survey when the house was built.

Mr. Wynes stated that he would like to see the survey because otherwise how was it determined where to put the house.

Mr. Warren Weaver explained that he is not sure what happened, if the builders switched the original side setbacks around.

Mr. Nieporte stated that the board should request a copy of the survey if they would like to look at it.

Mr. William Campbell, representative for Mr. Warren Weaver, stated that Mr. Weaver is asking for this variance because a complaint was received 10 years after the house had been built. The house had to be moved ahead when it was originally built in 1998 because there was a concern with the septic field. The septic field was part of the reason for the original variance. Mr. Weaver's builder told him to get the variance because he would need it to comply with the Zoning Ordinance. At that time it was required that there be a 5' setback from the West property line and a 4' setback from the East property line. Everyone is now pointing fingers, but it seems to be that the builders and surveyors inversed the setbacks. If Mr. Warren Weaver has to move his structure it would be structurally difficult. The purpose of the Zoning Ordinance is to protect the health, safety, and well fair of people. The growth and placement of structures on a lot, there are fire safety factors taken into consideration. The nearest building on this property is located at about 20' – 25' and that is Greg Weavers property and he is also the complainant. Mr. Greg Weaver was aware of this property when it went up for sale. While the home was being constructed Warren lived in Greg's house. There is no hardship being presented relative to the health, safety, and well fair of the community. If the building has to be moved, it is on a block foundation with footings so it may be unable to be moved. Moving the building to the East may cause problems and the other option would be to completely remove the structure. This would

be a hardship to the applicant when there have been no other complaints. There are no run off problems. Mr. Weaver was granted the original variance and trusted that the builders and surveyors were building to the specifications of the variance because they are the professionals. The builders are taking no liability in the case and the surveyors have thrown their hands up. The exceptional circumstance is that there is a requirement for the septic field.

Mr. Gilchrist asked if there was water run off from the roof going towards the neighboring house.

Mr. Warren Weaver stated that there used to be drains pointing towards the neighboring property, but those have since been moved.

Mr. Gilchrist stated that there is a crawlspace opening on that side as well.

Mr. Warren Weaver stated that he has moved that so it is no longer on the neighboring property.

Mr. Gilchrist asked if there is anytime that Mr. Weaver might have to encroach on the neighboring property.

Mr. Warren Weaver stated that there is not.

Mr. Shively stated that the 2' dimension that is in question is the North and West corner of the house and the 7 ½ ' dimension is the Southwest.

Mr. Warren Weaver stated that was correct.

Mr. Gilchrist stated that there are no setback requirements for a fence, so it can be put right on the property line.

Mr. Wynes stated that the board would like to view the survey that Mr. Warren Weaver had when the structure was built.

Mr. Warren Weaver stated that he had a mortgage survey.

Mr. Gilchrist stated that Mr. Warren Weaver could shave the corner of the house 1 ½' and he would be able meet his original variance requirements. He also explained that there is 7 ½' at the front line of the house which is toward the lake.

Mr. Weaver stated that shaving the corner of the house off would be a possibility.

Mr. Wynes stated that if the board is to look at the overhang as being the point of measure, it would be 3'

Mr. Nieporte stated that Mr. Warren Weaver would only have to shave off 1' of the corner to meet the original variance because at the time of the variance it was measured from the foundation. If the variance is granted today it would have to be granted from the overhang, because that is what the ordinance reads today.

The meeting was open for public comment at 9:27 a.m.

Mr. Greg Weaver, 4911 Penny Lane, stated that he has had his property surveyed to prove that Mr. Warren Weaver's house is too close to the property line. He also stated that he had signed off on the original variance. At that time the setback was measured from the foundation, but had thought that the house would be 5' from the roof line. He also stated that Mr. Warren Weaver had come before the board 3 times for a variance to allow him to build a garage. This house being 20" from his property line is causing the property value of his property to decrease, and real estate agents agree. If the variance is approved another complaint will be filed because Mr. Warren Weaver still wouldn't be outside that variance. On the survey that was professionally completed by Mid Michigan in July, the one part of the house is 3.72' from the property line. So if a 2' variance was granted he would immediately be 3" outside of the variance again.

Mr. Nieporte requested a copy of the survey.

Mr. Wynes stated that the variance request is for 3' not 2'

Mr. Nieporte explained that the request is to be 2' from the property line, which would be 3' closer than was originally granted.

Mr. Greg Weaver stated that the other corner of the house is 4 point something and that would be ok with the new variance. The access to the crawlspace has been moved, but it is now right on the property line. There are still sprinkler valves on his property. The reason that he didn't complain 10 years ago was because he also trusted the builders to know what they were doing.

Mr. Zalewski stated that in reference to the survey he talked with Mr. Warren Weaver and he indicated that he had that he had his property surveyed to confirm that the survey done was correct in that indeed it confirmed that his overhang is 2' from the property line. If it is not 2' and it is only 1.72' then staff would have to republish the public hearing notice.

Mr. Nieporte stated that the board would not be able to take action on this variance if it is 1.72' and Mr. Warren Weaver would need to reapply for a variance to be 1.72' from the property line, not 2'.

The meeting was closed for public comment at 9:32 a.m.

Mr. Wynes asked Mr. Warren Weaver to comment on the survey.

Mr. Warren Weaver stated that he has never seen the survey. He explained that he only had the line checked to confirm that it was correct; he never had a survey done.

Mr. Nieporte stated that it was confirmed that the structure is 3.72' from the property line; He also clarified that the survey that was conducted by Mr. Greg Weaver was found to be correct.

Mr. Warren Weaver stated that Mr. Nieporte was correct.

Mr. Nieporte stated that if the line was confirmed to be correct, then it appears that the structure is 1.72' from the property line. This would mean that Mr. Warren Weaver would have to reapply because what was applied for and what was posted was incorrect.

Mr. Zalewski asked if the overhang was indeed 2'.

Mr. Weaver stated that he did not measure it so he can't be sure, if worse came to worse and it was only a couple of inches he could get someone to shave the over hang off.

Mr. Nieporte stated that if Mr. Warren Weaver is meeting the 2', then the board can go ahead if they want and move forward.

Mr. Shively stated that if the board approves the variance he would have to remove 3" from the roof overhang rather than shaving a wall or moving the house.

Mr. Nieporte stated that it seems that the builder accidentally flip-flopped the sides.

Mr. Wynes asked if there was a statue of limitations.

Mr. Nieporte stated that there is not a statue of limitations.

Mr. Gilchrist stated that he has been a builder all his life, moving the house is going to cost a lot of money. Shaving off a corner of the house is not complicated; the board should stick to the 5' variance.

Mr. Shively stated that it would be best to grant the variance.

Mr. Bean stated that granting the variance would be the best option, shaving the house becomes too involved. 12" will not have a massive impact on the property values.

Mr. Gilchrist asked how much would need to be taken off.

Mr. Nieporte stated that it is not up to the board to determine how much eave he has to remove. It is up to the board to determine how far from the side property line you want the applicant to be, whether it is the 2' granted today or denied and it reverts back to the 5'.

Mr. Wynes stated that today measurements are taken from the overhang, not the foundation.

Mr. Nieporte stated that Mr. Warren Weaver is asking for a variance to be 2' from the property line.

A motion was made by Mr. Shively, supported by Mr. Bean to approve Variance Request #08-15 as submitted because there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply to other properties in the zoning district. The variance is necessary for the preservation and enjoyment of a substantial property right similar to those possessed in the zoning district. The variance will not materially impair the purpose or intent of this ordinance or the provision from which the variance is requested and that the immediate practical difficulty causing the need for the variance request was not created by the applicant.

Yes: Wynes, Gilchrist, Shively, Bean.

No: None.

Variance approved

STAFF COMMENTS

Mr. Nieporte stated that a citizen planner course will be held in Harrison at Mid Michigan Community College, for those who do not have their citizen planner certification.

BOARD COMMENTS

Mr. Gilchrist stated that there is a good article on family housing in the Planning & Zoning news this month.

Mr. Bean asked if there was verification after a variance is granted.

Mr. Nieporte stated that when you fill out an application or come before the board and sign the application stating that this is the way it is on the land, we go out and check before construction. The owner has the responsibility to construct it the way they are supposed to.

Discussion was held on family housing.

ADJOURNMENT

The meeting was adjourned at 10:05 a.m. by the call of the chair.

Craig Schripsema, Secretary

Brandy Freed, Recording Secretary