

BURT TOWNSHIP
Zoning Board of Appeals
Meeting Minutes, April 24, 2009

The regular meeting of the Burt Township Zoning Board of Appeals was called to order by Chair Walt Lindsay on April 24, 2009 at 7 p.m. at the Burt Township Hall, Cheboygan Michigan

Attendance: Walt Lindsay, Gary Street, Harold Koviak, Katie Parker, Dave Poxson
Alternate: Kim Kihnke. Also attending: Dan Swantek (Zoning Administrator) and Joyce Hutto (Recording Secretary).

Guests: Don Cheyne, David Steenstra, Linda Steenstra, Joe Ruicci, Marie Ruicci, and Jim Parker.

Minutes-February 27, 2009

MOTION: Moved by Harold Koviak and seconded by Katie Parker to accept the minutes of February 27, 2009 as written.

MOTION APPROVED

Public Comment

No Comments

Public Hearing

Jerome and Patricia Randolph, 2068 Elmhurst Rd, Brutus Mi 49716. –Case #241

Don Cheyne (Builder for Randolph's) attended the meeting representing Jerome and Patricia Randolph. The Randolph's request a variance to tear down a legally non-conforming building (their residence) and reconstruct a residence on the same non-conforming lot. The existing residence is non-conforming because it encroaches in both the 75' waterfront setback and the 10' side setback on the south. The lot is non-conforming because it is approximately 50' wide and the waterfront residential district requires a lot to be 100' wide. The Randolph's request (1) that the footprint of the reconstructed building be expanded in the rear by approximately 7' on the north side to approximately 11' on the south side, (2) that the encroachment in the waterfront setback continue unchanged at 9'5", and (3) that the height of the building be increased to approximately 31' to accommodate a basement. The reconstructed building would not encroach in either side setback. This proposal was first presented to the board on September 26, 2008 and was tabled at that time for future consideration.

Don Cheyne stated the lot has a significant grade issue on the waterfront side of the house and by compressing the width of the house to eliminate the encroachment in side yard setback on the south, it was necessary to stretch the house in length to accommodate the square footage of the floor plan the Randolph's desire. Mr. Cheyne stated that the height of the proposed structure appears to fit decently from the lake side with the homes on either side of the Randolph's. It appears that the eave height of the Randolph's proposed home would be about 4 ½ feet higher than Joyce Hutto's home to the immediate south. The peak of the proposed home would be approximately 8 feet taller than the overall height of the Hutto home. Mr. Cheyne presented an aerial photo of Elmhurst Road showing that other homes will have a similar problem with

replacement because of common lot size and topographical considerations. Mr. Cheyne said the Randolphs' objective is for the edge of the lakeside deck to not be any closer to the lake than it is at present while compressing and stretching the house to fit the property and make it a livable home for the Randolph's.

Katie Parker raised the issue of lot coverage. The lot on which the Randolph's home is located is 50 feet wide x 242 feet deep. The proposed building would cover 19.3% of the lot, thus not exceeding the allowed 20%.

The Board took note of an April 22, 2009 letter from Mr. Randolph setting forth an option to reduce the size of the proposed lakeside deck by 3 feet, thus reducing the encroachment in the waterfront setback to 6'5".

Dan Swantek reported that the Township had received one letter from a resident of no objection to the Randolph's proposal and one letter which took exception to the proposed encroachment in the waterfront setback.

Walt Lindsay noted key provisions of the Burt Township zoning ordinance:

1. Section 6.02(1) which provides that a non-conforming building may not be reconstructed unless it is changed to conforming use.
2. Section 6.12 which provides that no structures shall be allowed in the waterfront setback.
3. Section 8.01(5) which sets forth the requirements an applicant must demonstrate to secure a dimensional variance.

Following discussion and prior to any motion addressing the Randolph's request for variance, Mr. Cheyne requested that the Randolph's request for variance be withdrawn. Mr. Cheyne indicated that the Randolphs will return to the ZBA when they are ready to further discuss their building plans.

Public comment: Jim Parker stated that all the lots on Elmhurst Road are small and non-conforming. If the ordinance were written to allow what is there on this very old section of Burt Lake, we would have a different ordinance than what we have now. The Randolph house has been there many years and the board should take into consideration this area and should give leeway to grant a variance.

Joseph Ruicci, 893 Indian Point Trail, Brutus, Mich. 49716

An appeal hearing was held February 27, 2009. Due to the concern of the ZBA members about the procedure followed at that time, it was determined that Mr. and Mrs. Ruicci be granted a new (de novo) hearing and that no action be taken on this matter as a result of the February 27th hearing. This is to insure that the Ruiccis have an opportunity to present their case to a quorum of the ZBA. Chairperson Walt Lindsay explained the no argument, evidence or documents presented at the February 27th hearing will be used in making a determination of the Ruicci's appeal before the ZBA. All photographs and other materials previously submitted were returned to the Ruicci's.

Dan Swantek, Zoning Administrator, wrote Mr. Ruicci on Aug 14, 2008 to advise of his finding that the Ruicci's had failed to secure a zoning permit for the new construction underway on their property. The letter also stated that the Zoning Administrator had determined the Ruicci's were in violation of the waterfront setback provisions of the zoning ordinance due to new construction in the 75 foot setback. On February 5, 2009, Mr. Ruicci filed a petition for a dimensional

variance to allow encroachment in the waterfront setback to construct an 11'x14' pergola adjoining the south side of the residence.

Lindsay advised that the Ruicci's had not filed any paper work requesting an appeal of the Zoning Administrator's finding that the Ruicci's had failed to secure a zoning permit prior to the commencement of new construction on the property and had placed new structure in the waterfront setback. Mr. Ruicci confirmed that he was not appealing the rulings of the Zoning Administrator and that his only appeal was a request for a variance to complete construction of an 11 foot by 14 foot pergola on the waterfront side of his home facing south.

Letters were presented by Mr. Ruicci from his neighbors stating that (1) the pergola is only visible from the water and not visible by the neighbors, (2) the pergola is an architectural improvement, (3) the pergola is a cover as a protection from the sun, (4) there are no negative impacts on the neighbors, and (5) there is no adverse effect on property values. There were four letters approving and one letter opposing the pergola.

Lindsay noted agreement that the south west corner of the house closest to the water measured 65 feet from the lake's ordinary high water mark. This places at least half of the proposed pergola in the 75 foot waterfront setback. It was noted that there was no above ground structure in place at the location of the proposed pergola prior to the Ruicci's commencing construction of this structure.

Note was taken of Zoning Ordinance Section 6.02(1) which provides that a non-conforming building may not be structurally altered if the alteration increases the extent or degree of the non-conformity. There was discussion whether adding structure above ground on a prior existing pad encroaching in a setback would represent increasing the extent of a non-conformity. Also noted was Section 6.12 which restricts structures in the 75 foot waterfront setback. And reference was made to Section 8.01(5) which sets forth the requirements an applicant must demonstrate to secure a dimensional variance.

The Board was in agreement that construction not being in view of a neighbor failed to fulfill the requirement that a requested variance be due to unique circumstances or physical conditions of the property. Gary Street noted that keeping structures back away from the lake is important for the protection of the lake.

Public Comment: Jim Parker said this home is probably one of two homes that Parker is aware of set on a lot with two views of the lake. The structure of the pergola is acceptable to Parker as a Township resident.

MOTION

Moved by Gary Street and seconded by Katie Parker to deny the Ruicci's request for a variance to construct a pergola as proposed on the south side of their home.

Reasons: the proposed pergola encroaches in the 75 foot waterfront setback; the pergola is new construction which increases the extent or degree of the existing building's non-conformity; the Ruicci's did not demonstrate that the strict enforcement of the Ordinance would result in practical difficulty per Section 8.01(5) and thus the standards for granting a dimensional variance were not satisfied.

Roll call vote: Street-yes, Lindsay-yes; Koviak-no; Parker-yes; Poxson-yes.

MOTION APPROVED

Lindsay introduced for discussion the partial construction of a porch completed by the Ruicci's on the west side of their home. Mr. Ruicci explained that, prior to the adoption of zoning in Burt Township, the home now occupied by the Ruicci's included a covered porch on a concrete pad

the same size and location as presently existing. The Board agreed that the porch is a prior non-conforming use that may be continued per Section 6.02(1) and that the construction underway is allowed per Section 6.02(1) as a structural alteration that does not increase the extent or degree of the building's non-conformity.

David Steenstra, 2377 Pecks Trace, Topinabee, Mi

Katie Parker requested to be removed from this case because of a conflict of interest. She stated that her husband, Bert Ebbers, has provided consulting services relating to this property.

MOTION

Moved by Harold Koviak and seconded by Gary Street to accept Katie Parker's declaration of a conflict of interest, and that she be removed from the consideration of this case.

Roll call taken:

Street-yes; Lindsay-yes; Koviak-yes, Poxson-yes.

UNANIMOUSLY APPROVED

Kim Kihnke, an alternate member of the ZBA, was welcomed to serve for this case.

Chair Walt Lindsay opened the public hearing and explained that the Steenstra's are requesting a dimensional variance to allow for encroachment in the 75 foot waterfront setback to expand their residence. In 1990, the previous owner, Abraham van der Spek, received a 25 foot waterfront setback variance to construct the existing building. The Steenstras request two new rooms, one on each side of the existing building and each room measuring 24 feet wide x 25 feet deep. In addition, they request a patio on the lake side of each new room; each patio would encroach in the waterfront setback. The waterfront setback encroachment for each new room would be 7 feet plus an additional 12 feet for each new patio.

Mr. Steenstra explained that the front (lakeside) of the house looks over an all natural terrain on top of a 12' to 15' bluff to the water. After discussion, it was agreed that the existing deck and screened porch, which are built on pillars and are the parts of the house closest to the lake, measure 56 feet from the lake's ordinary high water mark. It was further agreed that the house foundation (from which the deck and screened porch extend toward the lake) measures 68 feet from the ordinary high water mark. The new rooms on both sides of the present building are proposed to line up with the existing foundation 68 feet from the lake, thus resulting in a request for a 7 foot variance for each of the 24 foot wide new rooms. The proposed patios would be lakeside of each new room and the edge of each patio closest to the lake would line up with the edge of the existing deck and screened porch which are positioned 56 feet from the lake. The Steenstra's also propose to screen the existing deck to match up with the screened porch which is immediately adjacent; no additional footprint would be added. One letter of support was received for the proposed structures.

Mr. Steenstra stated that moving the 24 foot by 25 foot new room proposed on the south side of the existing building is not an option because doing so would unreasonably restrict use of the driveway which cannot be moved any further to the rear (or east) of the lot due to topographical limitations of the lot; the driveway is already positioned as far east as possible given a high bluff. Walt Lindsay stated his feeling that the size of the proposed room addition on the south could be reduced in order to comply with the 75 foot waterfront setback; lacking that, Lindsay said he felt the encroachment in the setback could at least be reduced from the 7 feet proposed by adjusting

room size and/or room layout. Following discussion, the Steenstra's stated that they were willing to move the room addition on the north 7 feet to the rear in order to comply with the 75 foot waterfront setback requirement. There was also discussion of whether action on this variance request should be tabled to provide the Steenstra's with the opportunity to submit a clear updated drawing.

Public Comment: Jim Parker stated that the Zoning Board has been adamant about not approving a variance unless a property has exigent circumstances. Mr. Parker does not feel the request of the Steenstra's supports the granting of a variance.

MOTION

Moved by Harold Koviak and seconded by Gary Street as follows: (1) approve a 7 foot waterfront setback variance for the 24 feet wide x 25 feet deep room addition on the south side of the house, (2) require that the room addition on the north side of the building be moved toward the rear (east) so that it complies with the 75 foot waterfront setback, (3) allow the existing deck and screened porch to become entirely screened, (4) require that the existing steps extending toward the lake from the deck/screened porch be removed and new steps constructed not any closer to the water than the lakeside edge of the existing deck/screened porch (measured at 56 feet from the lake), (5) require compliance with Section 6.12(3) which limits the use of specified surfaces in the waterfront setback, and (6) condition all parts of this motion on the Steenstra's submitting a new drawing consistent with the motion.

Reasons: In accordance with Section 8.01(5), the Steenstra's have demonstrated that strict enforcement of the Ordinance would result in practical difficulty. The topography of the lot is such that the driveway butts up against a bluff and cannot be reconfigured to eliminate encroachment in the waterfront setback to accommodate the addition on the south side of the building. This addition is a suitable use of the land given the construction area the Steenstra's have to work with.

Roll Call

Street-yes; Lindsay-no;Koviak-yes;Kihnke-no;Poxson-yes.

MOTION APPROVED

Walt Lindsay thanked Kim Kihnke for serving on the Steenstra case. Katie Parker resumed her position as a regular member on the Board.

Other Business

Jim Parker, 10240 Brutus Rd. Brutus, MI

Chair Walt Lindsay stated that the discussions with Mr. Parker concerning clean up of his commercial property date back to May, 2007. Agreements have been made between Jim Parker and the Zoning Board of Appeals on September 21, 2007 and September 28, 2008 as noted in the ZBA minutes of those dates. Walt Lindsay noted that in order to best measure compliance by Mr. Parker, it is essential for both Mr. Parker and the ZBA to know clearly what has been agreed upon. To achieve this, Lindsay presented Mr. Parker with a written Memorandum of Agreement including a drawing of the Parker property. Following discussion, three changes were agreed upon and noted in the written Agreement. The Memorandum of Agreement was then signed by Mr. Parker and by Mr. Lindsay on behalf of the ZBA. A copy of the executed Agreement is attached to these minutes.

REPORTS

Zoning Administrator Dan Swantek presented the revised Application for ZBA Hearing/Variance. Mary Campbell, the Township's Planning Consultant, actively participated in the revision process. The updated form is now ready for use.

Dan Swantek requested an informal opinion of the ZBA as to whether a variance would be needed to construct a 1288 square foot accessory building with approximately 88 square feet of once corner cut out but fully covered with a roof supported by a post attached to the ground. This accessory building would be on property with another building as the principal use in the WR District; the ordinance stipulates a maximum size of 1200 square feet in these circumstances. While some reservation was expressed, the Board generally agreed that the roof as configured over the corner cut out should be considered as part of the building and thus the covered area should be included in the determination of the building's footprint. With the resulting total footprint totaling 1288 square feet compared with 1200 square feet allowed, a variance would be needed.

Swantek stated that he will draft a letter requiring the removal of junk from the Don and Bonnie Budzinski property on Birchwood Road.

Township Board Representative-Harold Koviak: No comment.

Planning Commission Representative – Gary Street: Gary Street said the Burt Township Planning Committee will be reviewing the Master Plan to consider updates and revisions.

ZBA MEMBERS COMMENT PERIOD

Katie Parker said the crossing of Carp Creek on Hogsback road is a source of silt and is a threat to Burt Lake.

Gary Street said the new cable company (Cablemax) has cables on the ground along the North side of West Burt Lake Road. Gary is concerned the cables could be a danger to bikers or anyone traveling along the road.

Next Meeting: May 22, 2009, 7 p.m., Burt Township Hall. Deadline for submitting requests for a public hearing to the Zoning Administrator: May 4, 2009

MOTION

Moved by Harold Koviak and seconded by Katie Parker to adjourn.

MOTION APPROVED

Meeting adjourned at 10:25 P.M.

Respectfully submitted

Joyce Hutto