



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

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BROOK SMITH
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BETH FILIP
VICE CHAIRPERSON

JAY HOLLAND
SECRETARY

PETER MAIER
MARTY STRAUB

DON DARNELL, *ALT.*
VACANT, *ALT.*

JANIS MILLER
RECORDING SECRETARY

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Tuesday April 4, 2021

The meeting was a "virtual" meeting held over the Zoom platform, properly noticed and available for public participation.

Members present: Chairperson Brook Smith, Vice-Chairperson Beth Filip, Secretary Jay Holland, Peter Maier, and Marty Straub. Absent: None

Also, present: David Rohr, Director of Zoning and Planning; and Janis Miller, Recording Secretary.

1. **Call to Order and Pledge of Allegiance:** Call to order at 6:03 pm. Pledge of Allegiance omitted due to teleconferencing.
2. **Approval of Agenda:** Motion by Holland to approve the agenda as amended. Motion second by Filip. **Motion carried 5-0.**
3. **Approval of Minutes:** Motion by Straub to approve the minutes of February 2, 2021, as amended. Motion second by Filip.
Roll Call Vote: Yeas – Filip, Straub, Maier, Smith: Nays - None: Abstain – Holland: Absent – None. Motion carried 4-0.
4. **Public Comment – Non-Agenda Items:** None
5. **Public Hearing Procedure Review:** Chairperson Smith reviewed the Public Comment Policy for the virtual public participants.

6. Action Items:

Item #1 (21-ZBA-890) Wittner, 9930 Stinchfield Woods Road

Variance:

A) A dimensional variance for a reduced side setback of nine-point-five (9.5) feet rather than the fifteen (15) feet required.

a. **Conflict of Interest/Ex-parte Contact Review:** None.

b. Staff Presentation and Questions from ZBA members:

DPZ Rohr summarized that the applicant was requesting a variance to increase the roof pitch and height to add a second story to the cottage. This is a small, .4-acre, Rural

Residential (RR) property with a road setback, waterbody setback, and both a south side yard and west side yard setback. It is a non-conforming parcel. The one-story structure is on a slab and the applicant is experiencing electrical and plumbing problems. The second story is for additional living space and storage. The project will not increase the footprint of the house, just raise the height of the structural wall.

c. Petitioner Presentation and Questions from ZBA members:

Jeff Wittner, applicant, stated the house has difficulties with plumbing in the attic that freezes, and several additions (front room, sunroom, and kitchen) over the years which left the cinderblock exterior walls as interior support walls. He stated the house is unlivable and he would like to make it a useable and healthy living space that enhances the neighborhood. All except for the sunroom is insulated and heated.

d. Public Comment:

Opened: 6:36 pm

i. letters and/or emails: Three letters objecting and one letter supporting.

ii. comments from public in attendance:

Mary Hall, 9920 Stinchfield Woods Road

She questioned the practical difficulty, how the rear setback was measured, and the capacity of the septic field for a second bathroom. She said the second story would compromise the privacy of her back yard. She opposes the variance request.

Marlene Alvaroe, 9910 Stinchfield Woods Road

She said the two-story home would block her view of the lake. Runoff from his property to hers was a problem. In her estimation it was too much structure for the postage stamp size property. She opposes the variance request.

Shannon Aldridge, 9910 Stinchfield Woods Road

Her objection was the addition to the house on the small lot size. She also questioned the water runoff. She opposes the variance request.

Ned Suddendorf, 10004 Stinchfield Woods Road

He stated that when the garage was built, Jeff was required to do stormwater drainage to the canal so there is no drainage going to the east. No one currently lives in the house. He supports the variance request.

Tim Depp, Jeff Wittner's builder

Most of the square footage of the house is unuseable and not livable in its present state. The house has 3 or 4 different levels with the back porch two steps down and completely cut off. The roof needs to be elevated.

Steve Morehouse, 10144 Stinchfield Woods Road

He's owned a half interest in the road since 1995. He is not aware of water flowing across the road and commented the [Wittner] drainage seems to work well for the low

spots to the north of his property.
 Closed 6:57 pm

e. Zoning Board of Appeals deliberations and Standards of Review:

The lot and home are both non-conforming. ZBA approved variance in 2016 to build a two-story garage. Space above the garage storage or living space? Discussion of 2021 Zoning Ordinance Section 24.05(C) Legally Non-conforming Structures: Expansion. Definition of a practical difficulty and how it applies here. Minimum amount necessary to mitigate problem. If the additional height were to be achieved without creating additional side yard setback, would there be a need for a variance. DPZ Rohr said it would not be an expansion and he could proceed with normal zoning and building permits. Non-conforming implications if the second story was offset from the property line, offset from the first story another five and a half (5.5) feet, so that portion of the structure maintains the required setback. Septic field capacity for adding a bath and bedroom. Does this variance follow the intent and purpose of the Zoning Ordinance?

Chairperson Smith asked Mr. Wittner, after listening to the debate would he like to table the application request until next month, allowing time to provide more information on what the practical difficulty is, and knowing if an adverse decision was reached tonight, he'd have to wait a year to come back for a variance?

Mr. Wittner stated the home was not livable and asked for the ZBA to proceed.

Standards of Review

<p>(1) Practical Difficulty §29.06(C)(1) Does the requested variance meet the following standard</p>	<p>6.02 Side-yard setback</p>
<p><i>The strict application of the terms of this Ordinance would constitute a practical difficulty.</i></p>	<p><u>YES</u> Filip Straub Maier Holland Smith</p>
<p>Notes:</p>	<p><u>NO</u> none</p>
<p>(2) Physical Conditions §29.06(C)(2) Does the requested variance meet the following standard</p>	<p>6.02 Side-yard setback</p>
<p><i>The practical difficulty is due to some physical condition peculiar to the property involved.</i></p>	<p><u>YES</u> Filip Straub Maier Holland Smith</p>
<p>Notes: Filip: The size of the lot is much smaller than what the zoning district requires. Smith: I think that it is not just the size of the lot, but the fact that the structure was built in the 1950's, before there was a side lot setback. So, that's unique to this property.</p>	

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	<u>NO</u> None
(3) Self-Created §29.06(C)(3) Does the requested variance meet the following standard	6.02 Side-yard setback
<i>The practical difficulty is not self-created.</i>	<u>YES</u> Filip Straub Maier Holland Smith
Notes: Straub: Yes, for the reasons the Chair just stated. Smith: There is no indication the applicant is responsible for the location of his home on the lot.	<u>NO</u> None
4) Reasonable Amount Necessary §29.06(C)(4) Does the requested variance meet the following standard	6.02 Side-yard setback
<i>The variance is a reasonable amount necessary to mitigate the practical difficulty.</i>	<u>YES</u> Straub Maier Holland Smith
Notes: Straub: In the context of the discussion, and in the context of the question before us, the nine and a half feet, I think it may be a reasonable amount to mitigate practical difficulty, so I will vote yes. Holland: I'm having a difficult time with this, however he can actually do more than he's doing to solve his practical difficulty, so I'm going to vote yes. Smith: Yes, as well. When approving the current ?????? and allowing him to treat that as his west lot line for purposes of future construction.	<u>NO</u> Filip
(5) Public Health, Safety, and Welfare §29.06(C)(5) Does the requested variance meet the following standard	6.02 Side-yard setback
<i>Approval of the variance will not be injurious to the public health, safety, and welfare.</i>	<u>YES</u> Filip Straub Maier Smith
Notes: Filip: Yes, there is no evidence that it could be injurious to the public health, safety, and welfare. Holland: No, as I don't see any evidence to the contrary. Smith: Yes, as I don't see any evidence that it is going to be injurious.	<u>NO</u> Holland
(6) Adverse Effect §29.06(C)(6) Does the requested variance meet the following standard	6.02 Side-yard setback
<i>Approval of the variance will not affect the use or value of the adjacent properties or the area in a substantially adverse manner.</i>	<u>YES</u> Filip Straub Maier Holland Smith
Notes: Filip: As of right now the testimony I have heard about that is speculation without any backup of those who do valuations. As of right now I don't see evidence supported by expert testimony that it does. Straub: Yes, for a slightly different reason than Beth. We are charged with determining "substantially adverse manner", as contrasted with desirable to the neighbors, pleasing to the neighbors, etc.	<u>NO</u>

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<p>Holland: The realistic fact is that the applicant can move forward and build an even larger structure, more massive, than he has proposed, without this variance, I don't see where it has a substantially different impact, so I will have to vote yes. Smith: I vote yes and endorse Jay's analysis.</p>	<p>None</p>
<p>(7) Intent of the Ordinance §29.06(C)(7) Does the requested variance meet the following standard</p>	<p>6.02 Side-yard setback</p>
<p><i>Approval of the variance is consistent with the intent and purpose of this Ordinance.</i></p>	<p>YES</p>
<p>Notes: Filip: I have to vote no because of my previous no vote. Straub: Yes, I think it is consistent with the intent and purpose of the ordinance, especially in light of the evidence presented earlier that the property predates any Zoning Ordinance. This is exactly why we deal with variances. Maier: Yes, exactly what Marty said. To me this is the perfect example of what you need a variance for. Smith: Yes, for the reasons previously stated on the record.</p>	<p>Straub Maier Holland Smith</p> <p>NO Filip</p>

e. Motion by Zoning Board of Appeals:

Motion by Filip to approve the variance for petition (21-ZBA-890) to Jeff Wittner, for the property located at 9930 Stinchfield Woods Rd., tax id (D-04-11-100-011), under Ordinance Section 6.02, for a requested side yard setback, on the west parcel line, of nine-point five (9.5) feet as opposed to the fifteen (15) foot side yard setback from the west parcel line required by the Ordinance. Motion second by Maier.

Roll Call Vote: Yeas – Filip, Straub, Maier, Holland, Smith: Nays - None: Abstain – None: Absent – None. Motion carried 5-0.

Item #2 (21-ZBA-891AB) Stephen Goble

Postponed by the applicant to the May 2021 ZBA agenda.

7. **Public Comment:** None.

8. **Concerns of ZBA Members, DPZ, and Recording Secretary:**

Smith questioned [newspaper] notice absent from the packets.

DPZ Rohr stated that what was in the packets was in the [newspaper] notice.

9. **Adjournment**

Chairperson Smith declared the meeting adjourned at 8:11 p. m.

Respectfully submitted,

Jay Holland, Secretary

Janis Miller, Recording Secretary

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