



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

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BROOK SMITH
CHAIRPERSON

BETH FILIP
VICE CHAIRPERSON

PETER MAIER
SECRETARY

KATHY BRADBURY
MARTY STRAUB

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

JANIS MILLER
RECORDING SECRETARY

D “minimum”.REGULAR MEETING OF THE ZONING BOARD OF APPEALS Tuesday March 7, 2023

Members present: Chairperson Brook Smith, Vice-Chairperson Beth Filip, Kathy Bradbury, Peter Maier, and Marty Straub. Absent: None.

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

1. **Call to Order:** Chairperson Smith called the meeting to order at 6:00 pm.
2. **Pledge of Allegiance:** Recited by all.
3. **Approval of Agenda:** With no additions or corrections, Chairperson Smith declared it was approved.
4. **Approval of Minutes:**
Motion by Straub, seconded by Filip, to approve the minutes of May 3, 2022 as amended.
All ayes, two abstentions (Bradbury and Maier).
5. **Public Comment – Non-Agenda Items:** No public comments.
6. **Public Hearing Procedure Review:**
Chairperson Smith reviewed the public hearing procedure and the public comment policy.
7. **Action Items:**

Item #1 Election of ZBA Chair, Vice-Chair, and Secretary

Motion by Straub, seconded by Filip, to appoint Brook Smith as Chair, Beth Filip as Vice-Chair, and Peter Maier as Secretary. All ayes. Motion carried.

Item #2 (23-ZBA-001) Jackie Bates, 9405 Linck Dr., Pinckney

Variances:

- a) Reduced front yard setback of 21.87 feet rather than the 25 feet required, and
- b) Reduced waterbody setback of 27.58 feet rather than the 35 feet required.

a. Conflict of Interest/Ex-parte Contact Review:

No conflicts of interest by Board members.

b. Staff Presentation and Questions from ZBA members:

DPZ Rohr summarized the project stating the home sits between Big Portage and Little Portage Lakes. The home's current 635 square feet will be replaced with 1,340 square feet. The applicant wants an addition on the front side yard and a deck, with semi-transparent hand rails, on the waterbody side new flat roof.

Discussion: Several questions on notification (in paper & to neighbors) as well as the sign posted on the property. A question on how much closer to the road the addition would be.

c. Petitioner Presentation and Questions from ZBA members:

Kevin Colb, Colb Company LLC (Home Designer), representing the owner.

Mr. Colb noted the home was not being demolished and the height limitation was due to the handrails on the new rooftop deck. The front-yard setback (an additional 3 ft. 4 inches) is to allow more space in the bedrooms. The design has met the Zoning Ordinance standards (allowable square footage to build on) except for the roadside setback. The site was professionally surveyed by Arbor Land Consultants.

Questions and discussion: How large is the stoop from the sliding doors on the waterfront side? Answer was eighteen inches. A grade level deck or permeable patio are not in the plan. The overhang over the front door is how big? The overhang is three feet with no posts or columns. Question whether this will be built substantially in accordance with the plans presented to the ZBA this evening.

Mr. Colb stated there would be no changes to the plans after approval. The structure is currently conforming in setback to the road and with approval it would be a non-conforming setback to the road.

d. Public Comment:

i. letters and/or emails: No letters, emails, or phone calls of record.

ii. comments from public in attendance:

Opened 6:26 PM

Wayne Broich, 9401 Linck Dr., Pinckney, MI

His concern was the waterbody setback. He stated he holds the deed to the road (Linck Drive) and the bottom rights to the river. As owner of the private road he wanted to know who was liable for damages during construction and where the construction vehicles would park. Chairperson Smith stated that was not a ZBA decision. He ended by stating the [Bates] house was a beautiful design and he had no objections to the requested variances.

Tim Hammond, 9403 Linck Dr., Pinckney, MI

His concern was the setback requirement between houses. As he lives next door to the Bates home, he wanted to know if approving her setback would prevent him from future remodeling his home in the direction of her house.

DPZ Rohr explained that side setbacks were 10 feet.

Closed 6:30 PM

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

Deliberations:

Does §16.34 not fall within the exception of the waterbody setback? DPZ Rohr said yes it does apply as §16.34 says it should never be less than 35 feet. This lot was in existence before the first Zoning Ordinance and the designer has explained the reason for going toward the waterbody was to enlarge the bedrooms to a minimum size. Having difficulty seeing practical difficulty. We are taking a nonconforming use and making a new nonconforming use. When the structure was built it was fully conforming and we layered onto it limitations that made it nonconforming. There are limitations on the existing home and we need to decide how to use the lot in conformance with the Zoning Ordinance. The sewer made possible year round homes of existing cottages. The ZBA addresses unique conditions, and waterfront properties are unique, and is in a position to help accommodate with the current design. We can grant relief if it meets the criteria.

DPZ Rohr made clear the waterbody setback is a setback from the high-water mark. The reason we are doing that is because the [building] height has increased by 4 inches, increasing a non-conformity. It is not a height variance, it's just a waterbody setback.

Standards of Review:

(1) Practical Difficulty §29.06(C)(1) Does the requested variance meet the following standard:	A	B
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>The strict application of the terms of this Ordinance would constitute a practical difficulty.</i>	<u>YES</u> Straub Bradbury Smith	<u>YES</u> Maier Straub Filip Bradbury Smith
Notes: Smith – I think this is a classic situation of practical difficulty where you've got a very small house and there's a request to allow it to be enlarged enough to make it more usable in the Lakes Residential District, so that's why I'm finding the practical difficulty and voting yes.	<u>NO</u> Maier Filip	<u>NO</u> None
(2) Physical Conditions §29.06(C)(2) Does the requested variance meet the following standard:	A	B
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>The practical difficulty is due to some physical condition peculiar to the property involved.</i>	<u>YES</u> Straub Bradbury Smith	<u>YES</u> Maier Straub Filip Bradbury Smith
Notes: Smith – Again, tiny lot and that's why this is being requested. If it were a half-acre lot, we wouldn't be having a problem.	<u>NO</u> Maier Filip	<u>NO</u> None

(3) Self-Created §29.06(C)(3) Does the requested variance meet the following standard:	A	B
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>The practical difficulty is not self-created.</i>	<u>YES</u>	<u>YES</u>
Notes: Smith – Again, she simply requires a lot at some point, she didn’t create the lot.	Maier Straub Filip Bradbury Smith	Maier Straub Filip Bradbury Smith
	<u>NO</u> None	<u>NO</u> None

(4) Reasonable Amount Necessary §29.06(C)(4) Does the requested variance meet the following standard:	A	B
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>The variance is a reasonable amount necessary to mitigate the practical difficulty.</i>	<u>YES</u>	<u>YES</u>
Notes: Smith – The Chair votes yes and yes for the reasons we’ve already discussed. Another thought of the issue Kathy raised about sight lines, and so forth, and I think what the plan for the waterbody side of this, that side of the house is going to now be a less of a mass situation for the neighbors to look at than when there was a peaked roof over that area that is now is going to have a flat roof with see through fencing around it. I think that’s kind of an improvement for the neighbors.	Straub Bradbury Smith	Maier Straub Filip Bradbury Smith
	<u>NO</u> Maier Filip	<u>NO</u> None

(5) Public Health, Safety, and Welfare §29.06(C)(5) Does the requested variance meet the following standard:	A	B
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>Approval of the variance will not be injurious to the public health, safety, and welfare.</i>	<u>YES</u>	<u>YES</u>
Notes: Filip – There’s no evidence presented this evening that this is going to be injurious to the public. Smith – The Chair votes yes and yes as well for the reasons stated by Beth.	Maier Straub Filip Bradbury Smith	Maier Straub Filip Bradbury Smith
	<u>NO</u> None	<u>NO</u> None

(6) Adverse Effect §29.06(C)(6) Does the requested variance meet the following standard:	<i>A</i>	<i>B</i>
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>Approval of the variance will not affect the use of the adjacent properties or the area in a substantially adverse manner.</i>	<u>YES</u> Maier Straub Filip Bradbury Smith	<u>YES</u> Maier Straub Filip Bradbury Smith
Notes: Smith – Yes and Yes as well in part to the rambling explanation I gave after the last one.	<u>NO</u> None	<u>NO</u> None

(7) Intent of the Ordinance §29.06(C)(7) Does the requested variance meet the following standard:	<i>A</i>	<i>B</i>
	Front setback 7.02	Waterbody Setback 7.02 & 16.34
<i>Approval of the variance is consistent with the intent and purpose of this Ordinance.</i>	<u>YES</u> Straub Bradbury Smith	<u>YES</u> Maier Straub Filip Bradbury Smith
Notes: Smith – Yes and yes for the reasons the pros have enunciated several times.	<u>NO</u> Maier Filip	<u>NO</u>

f. Motion by Zoning Board of Appeals:

Motion by Filip to approve the variance for (23-ZBA-001), to Jackie Bates, at 9405 Linck Drive, tax id (D-04-02-400-016), for a) reduced front setback of 21.87 feet rather than the 25 feet required, in accordance with §7.02 of the Ordinance, and b) reduced waterbody setback of 27.58 feet rather than the 35 feet required, in accordance with §7.02 & §16.34 of the Ordinance; with the condition that the construction, the building is substantially as illustrated before us, meaning the handrails and the safety pieces of structures are substantially transparent. Motion seconded by Straub.

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

6. Public Comment: No public comments.

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

DPZ Rohr: He stated there will be one agenda item, possibly two, next month.

Discussion versus concerns: At issue were the terms “reasonable amount”(Standards of Review) and “ minimum amount” (Zoning Ordinance). The ZBA has no authority to change the text of the Zoning Ordinance. The requested change needs to be brought to the Planning Commission with a recommendation to the Township Board of Trustees.

Documents regarding the agenda items can be obtained at the Township Hall during normal business hours, the Townships website: www.dextertownship.org and can be viewed on ew.livestream.com/dextertownship.org.

Discussion of the DPZ not giving his interpretation but actual finding of fact. Board Member Filip read §29.04(C)(1), the ZBA's jurisdiction.

Filip: She liked the plans and illustrations, **however** the buildable area on the lot was not specific.

Bradbury: She liked the way the they staked the property.

Smith: Concerned about the township email system.

Smith: He noted it had been a long time since the ZBA met their education requirement and suggested each take an online class.

DPZ Rohr: He said there was an educational budget to cover any educational requirements

8.. **Adjournment:** Chairperson Smith declared the meeting adjourned at 7:29 p. m.

Respectfully submitted,

Peter Maier, Secretary

Janis Miller, Recording Secretary