



**MORTON TOWNSHIP ZONING BOARD OF APPEALS
MEETING MINUTES – FEBRUARY 10, 2021 (held on Zoom)**

Meeting called to order at 6:00 P.M. by Jeff Cross

Pledge of Allegiance to the Flag by all

Members Present: Dennis Morawa, Yulanda Bellingar, Jeff Cross

Members Absent: None

Others Present: Township Supervisor/Zoning Administrator, Mark Klumpp; Recording Secretary, Vicky Esch

Public Present: Jeremy Gard, Casey Smith, Brian & Susan Watson

Motion by: Yulanda Bellingar

To Approve the minutes of the October 14, 2020, meeting as presented.

2nd by: Dennis Morawa

Vote: 3 Ayes 0 Nays 0 Absent Motion Carried

Motion by: Dennis Morawa

To appoint Jeff Cross as Chairman of the Zoning Board of Appeals for 2021.

2nd by: Yulanda Bellingar

Vote: 3 Ayes 0 Nays 0 Absent Motion Carried

Open Public Hearing

New Business

A. The hearing is for the purpose of hearing an appeal of the Zoning Administrator’s decision to deny zoning permit application (PZ20-076), for an attached garage in violation of Section 5.15 (#3) Setbacks, of the Morton Township Zoning Ordinance. The appeal is asking for an 11-foot 10-inch variance on the roadside.

Facts:

Property Code: 5411-138-058-000

Property Address: 7805 Court B

Owner/Applicant: Brian & Sarah Watson

Zoning: R-1

Notice in Big Rapids *Pioneer* on January 22, 2021

Letters sent to 21 neighboring property owners on January 25, 2021

Chairman, Jeff Cross, presented the facts of the appeal as listed above.

Comments by Mark Klumpp, Zoning Administrator:

- Non-conforming lot allowed to reduce by 10% to 6 feet.
- Existing concrete pad on the roadside, they want to build a garage in same spot.
- Owners were of the understanding that a variance had been approved in the past. There is no record of a variance being granted.
- Application denied based on setback rules in the zoning ordinance. Map shows width of the lot to be 60 feet. Looking at their diagram: 45 feet + 20 feet for the garage = 65 feet. Does not fit.
- Offered to him (Jeremy Gard, builder) that he could appeal to ZBA to ask for a variance. Concrete pads are different than a garage for an easement.

Comments by Jeremy Gard (builder) on behalf of the owners (Brian & Sarah Watson):

- When owners purchased the property were of the understanding that a variance had been previously granted, so when started project did not think would be a problem to build a garage where the cement pad currently is.
- Cars would be parked in the garage instead of parked on the existing concrete pad.

Comments by Dennis Morawa (board member):

- Went out to the property; found property monument located on the front of the property that marks the front property line and side at the same time. I measured from the outside of the sun porch, 11 feet and that came to the

center of the property line and they are asking for an additional 10 inches. The 10 inches will take you to the edge of the concrete pad.

- Emails received from neighboring property owners stated that previous owners had abused parking privileges, but that there were no problems with the current owners. Do not see where the garage would add any difficulty to surrounding residents to access the waterfront.

Comments by Casey Smith (CLPOC):

- The area down at the end of the road is a boat docking area and they are allowed docks & boats. There are 4 spaces. Not allowed to park vehicles down there, not enough room. Walking only. No impact on the garage.
- Looking at the property file what was originally approved: 10 feet of parking space when they built the 3-season porch.
- I would like to see not necessarily a survey, but Miss Dig done, just to check to see if there is anything under that concrete pad (fiber optics, gas line).

Jeremy Gard responded that they would have to do that anyway (Miss Dig) for their footings as they have to go down 24 inches.

Mark Klumpp asked Dennis Morawa if he said that the concrete pad came to the property line.

Dennis replied that it was 11 feet to the property line and if you give them the additional 10 inches, yes, you are going over the property line but would still be on the existing concrete pad.

Comments/questions by Jeff Cross, Chairman:

- Questioned Jeremy Gard and the Watson's if the proposed construction calls for removal of part of the sunporch. *Jeremy responded that a little bit, just enough to give them the width. Would need to basically change the way they access it, an alteration to the south side of the garage to get the width for a second car.*
- Expressed concern about the raised drain field and that any construction would not be able to interfere with that.

Close Public Hearing

Zoning Board of Appeals members discussion points:

- Three neighboring property owners expressed concern with the matter of access to the green space. Not a matter for zoning as the space is for CLPOC to enforce their own rules.
- Another concern from one of the property owners was if the garage was going to come off the existing concrete pad, but it is not.
- Variance goes with the property, not the owners. Dimension and access will not be any different that it is now. Will just be a garage instead of a concrete pad. Cars that would have been parked on the pad will now be parked in the garage.
- Things being stored inside, will look better.

Dennis Morawa reviewed the 5 standards that must be used as a basis of substantial evidence to determine whether or not to grant a non-use variance:

In the Finding of Facts:

1. Whether compliance with the regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. *Nonconformity of the lot would inhibit the lawful location of a principal or accessory structure (garage).* Standard is satisfied.
2. Whether a grant of the variance applied would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that requested would give substantial relief to the owner and be more consistent with justice to other property owners. *The variance is the minimum necessary to permit reasonable use of the land. Concerns expressed by neighbors, not matters related to zoning but to CLPOC.* Standard is satisfied.
3. Whether the plight of the owner is due to unique circumstances. *Problem creates a practical difficulty which is unique due to nonconforming lot limits and the use of them. Is common to neighboring properties, is located on the end of the road and does not interfere.* Standard is satisfied.

- 4. Whether the problem is self-created. *Practical difficulty was not created by an action of the applicant. Not self-created. Existing property line, monuments are there.* Standard is satisfied.
- 5. Whether relief can be granted in such that the spirit of the ordinance will be observed, and public safety and welfare served:
 - Will not be contrary with the intent and purpose of the zoning ordinance.
 - Will not cause a substantially adverse effect on adjacent properties.
 - Will relate only to the property of the owner.
 - Will not essentially alter the character of the surrounding area.
 - Will not increase the hazard from fire, flood, similar dangers, or increase traffic congestion.*No dangers with current footprint.* Standard is satisfied.

The Zoning Board of Appeals finds that all 5 standards have been met.

Mark Klumpp asked a clarification question for the board members and their findings. The ZBA can grant up to the property line; isn't this going over the property line by 10 inches? So now you are going to grant them the right to build over the property line? I don't want to over-extend our authority and let them build over their property line.

Comments by the board members in reply:

- Yes, we are encroaching on the road. The concrete pad is there, it is a different structure, you can drive over it.
- We should have very serious reservations of granting a variance that goes beyond the property line. If we are to grant the variance, it should not go beyond the property line.
- The building itself, being over the property line, I don't think we can or should do that.

Casey Smith commented:

- The CLPOC would not agree with that either. They were not of the understanding that the structure would be over the property line. If there is an overhang, no problem but the structure cannot go over the property line.
- Would like to propose that before you approve the variance that they have a 4-point survey done just to be sure where their property line is. From CL standpoint, would be more comfortable knowing that the structure is not going to be on common area of Canadian Lakes.

Jeremy Gard commented that if they were ok with just the overhang coming off the front over the property line; and if they had to decrease the size of the footprint of the garage by 10 inches to conform, they could still do the project, it would just be tight.

Motion by: Dennis Morawa

Determination of this board is:

In the finding of facts as per the Morton Township Zoning Ordinance, in granting a non-use variance, the Board **grants** the non-use variance as stated Zoning Ordinance, Section 12.2, Variance, Paragraph 3 (B) "would do substantial justice to the applicant as well as to other property owners in the district and would give substantial relief to the owner and be more consistent with justice to other property owners".

The request for a non-use variance on the east property line (roadside) of 11 feet is approved provided that the following conditions are met:

- 1. Structure proposed will not extend beyond the property line.
- 2. A 4-stake survey is done to show the location of the property lines.
- 3. Miss Dig is contacted to check if there are any utilities under the proposed project.
- 4. The Heath Department determines that the proposed project will not adversely affect the adjacent raised mound on-site sewage disposal system.

2nd by: Yulanda Bellingar

Vote: 3 Ayes 0 Nays 0 Absent Motion Carried

In making the determination, concerns expressed in writing by three proximate property owners were carefully considered and reasonably addressed during the public hearing. In so doing, “the spirit of the ordinance is observed, public safety secured, and substantial justice done.”

Old Business - None

Correspondence

Emails were received from three neighboring property owners in opposition of the requested variance.

Adjourn Meeting.

Motion By: Dennis Morawa

To adjourn the meeting.

2nd By: Yulanda Bellingar

Vote: 3 Ayes 0 Nays Motion Carried

Meeting adjourned at 6:55 P.M.

Respectfully Submitted,

Vicky Esch

Vicky Esch, Recording Secretary