

WHITE LAKE TOWNSHIP
ZONING BOARD OF APPEALS-SPECIAL MEETING
SEPTEMBER 10, 2020
7525 Highland Road
White Lake, MI 48383

Ms. Spencer called the regular meeting of the White Lake Township Zoning Board of Appeals to order at 7:00 p.m. and led the Pledge of Allegiance. Roll was called:

ROLL CALL: Debby Dehart
 Mike Powell
 Nik Schillack
 Josephine Spencer –Chairperson
 Dave Walz – Vice Chair

Also Present: Justin Quagliata, Staff Planner
 Sean O’Neil, Planning Director
 Lisa Hamameh, Township Attorney
 Hannah Micallef, Recording Secretary

Visitors: 0

Approval of the Agenda:

Mr. Powell MOTIONED to approve the agenda as presented. Mr. Schillack supported and the MOTION CARRIED with a roll call vote (Dehart/yes, Powell/yes, Schillack/yes, Spencer/yes, Walz/yes.).

Approval of Minutes:

Zoning Board of Appeals Regular Meeting July 23, 2020.

Mr. Schillack pointed out errors to the spelling of his name on page 5 and page 9. MOTIONED to approve the regular meeting minutes of July 23, 2020 as amended. supported and the MOTION CARRIED with a roll call vote (Dehart/yes, Powell/yes, Schillack/yes, Spencer/yes, Walz/yes).

New Business

- a. Applicant: Donna Marie and James Bauer
 2039 Ridge Road
 White Lake, MI 48383
- Location: **2039 Ridge Road**
 White Lake, MI 48383 identified as 12-18-351-056
- Request: The applicant requests to construct an accessory building, requiring variances from Article 3.11.Q, Water Features Setback and Article 5.7.B, Accessory Buildings or Structures in Residential Districts due to the proposed accessory building setbacks from the lake and side lot line.

Ms. Spencer noted for the record that 16 owners within 300 feet were notified. 0 letters were received in favor, 0 letters were received in opposition and 0 letters was returned undeliverable from the US Postal Service.

Property Description

The approximately 0.49-acre (21,344.4 square feet) parcel identified as 2039 Ridge Road is located on White Lake within the Stison Lake subdivision and zoned R1-D (Single Family Residential). The existing house on the property (approximately 2,599 square feet in size) utilizes a private well for potable water and a private septic system for sanitation.

Applicant's Proposal

Donna Marie & James Bauer, the applicants, are proposing to construct an accessory structure (pergola) in the rear yard. The proposed structure would be located on an existing patio.

Planner's Report

The proposed pergola is 12 feet by 16 feet (192 square feet) in size. The applicants intend to locate the pergola west of the existing house, in the rear yard along the frontage of White Lake. Section 3.11.Q of the zoning ordinance states no building shall be located closer than 25 feet to any regulated wetland, submerged land, watercourse, pond, stream, lake or like body of water. The pergola would be located 16 feet from the water's edge, which follows the seawall. A variance of nine (9) feet is requested for the setback from the lake.

The zoning ordinance prohibits accessory buildings from encroaching within five (5) feet of a side lot line. The outer edge of the pergola posts are located four (4) feet from the north side lot line. Roofs and gutters also cannot project closer than five (5) feet to the lot line. The roof overhang on the proposed pergola is located three (3) feet from the north side lot line. Section 7.27.vii of the zoning ordinance prohibits the Zoning Board of Appeals from granting a variance of less than five feet from a side lot line for safety reasons.

Mr. Powell asked staff what the definition of a pergola. Mr. Quagliata said the proposed pergola was an accessory structure, and said pergola contained four posts with an open slatted roof. The pergola would be a fully covered structure and permanently grounded. Anything permanently attached to the ground was considered a structure. Mr. Quagliata added the 25' setback from the lake was needed for visibility purposes. Mr. Quagliata also added the site plan submitted with the variance application did not show the whole property, and the house was not labeled in relation to the pergola, and there was no measurement shown from the house to the pergola. The pergola had to be 10' from the house to be considered an accessory structure; anything closer than 10' would be considered part of the house.

Mr. O'Neil added the zoning ordinance defined structure as anything constructed or erected which required permanent location on the ground, or attachment to something having such location.

Ms. Dehart asked staff how far the pergola encroached into the side yard setback. Mr. Quagliata said the post of the proposed pergola would be 4' from the north side lot line, and the overhang would be 3' from the side lot line. A structure setback is measured to the outside edging of a footing; and eaves, roofs or gutters cannot be within 5' of the lot line.

Mr. Bauer was in attendance to represent his case. He said he can adjust the border of the pergola so it's at least 5' away from the northern property line. He also added the reason for the pergola is to provide shade from the sun and rain. The sun beats down on the home's paver deck as it is now. A concrete patio comes out from the house about 20' ft, and past that is where the paver stones are. The pergola would be constructed where the pavers are now.

Mr. Powell said he met the applicant, and he was able to see the irons for the north property line, and the applicant shared he could move the pergola further away from the northern property line. He asked Mr. Bauer if the pergola can be constructed 10' from the house, and asked what would the applicant do if the dimensions on the plan were incorrect and the structure was closer to the lake?

Mr. Bauer said the pergola will be 10' from the house. He also said the shoreline in front of the home is concave, and at the northern part of the property line, there's 16', but as it curves towards the middle of the property, it is shorter than 16'.

Mr. Powell asked if the eave on the pergola will be an architectural feature for the distance between the house and the structure? Mr. Quagliata said no, the pergola will be measured from it's post to the home.

Ms. Dehart asked how many feet the proposed structure would be from the house? Mr. Quagliata said it's not shown on the plan, but the applicant said it would be 10' from the home. It could be moved closer to the home, but then the pergola would be considered part of the principal structure, and would have to meet the side yard setback for a principal structure.

Ms. Spencer opened the public hearing at 7: 21 P.M. Seeing none, she closed the public hearing at 7:21 P.M.

Mr. Powell said his issue is the impact of the pergola on the neighbors. He said there's a difference between an open, slatted roof, and the roof that was proposed. The roof proposed was very high, and would overshadow the size of the pergola. This would impact the view of the neighbors to the north.

Mr. Bauer said the pitch of the roof could be adjusted, and it didn't have to be as high as originally planned.

Mr. Powell asked the applicant if his in-laws were bound to the walkout level of the house or can the main floor be utilized? Mr. Bauer said his mother cannot navigate stairs well. Mr. Powell added he noticed the covered porch on the walk out level as well as the second-floor porch during his visit, and this pergola would make a third covered area.

Mr. Walz said a practical difficulty doesn't exist with this case in his opinion. Ms. Spencer agreed and said there are other alternatives that can be used, such as umbrellas or large trees.

Ms. Dehart asked would a freestanding pergola be an accessory structure? Mr. Quagliata said no, as long as it can be relocated and moved around. Ms. Dehart added that without a survey, it's unsure how far the proposed structure would be from the water line.

Mr. Walz asked if the size of the pergola was reduced, would a permit be needed? Mr. Quagliata confirmed, if a reduced pergola was relocated out of the 25' setback from the water and out of the setback from the north lot line, the pergola could be constructed without variance.

Mr. Walz asked the applicant if any consideration was given to a size reduction of the pergola? Mr. Bauer said he wouldn't be able to set the pergola back because the shoreline is concave, and the back of the house has the concrete slab that extends out. He added that they do have an umbrella, but it is not sufficient.

Mr. Walz MOVED to deny the variance requested by Donna Marie & James Bauer for Parcel Number 12-18-351-056, identified as 2039 Ridge Road, due to the following reason(s):

- **The request is a self created hardship and a practical difficulty does not exist. Denial of this request does not unreasonably prevent the owner from using the site for it's permitted use.**

Ms. Dehart SUPPORTED, and the MOTION CARRIED with a roll call vote (5 yes votes):

Dehart: YES; there are alternatives and it is a self-imposed hardship.

Powell: YES; the applicant has other means of providing shade, and there is usable area and the owner is not being prevented from using his property.

Schillack: YES; for the reasons stated.

Walz: YES; for the reasons stated.

Spencer: YES; this is a self created hardship and by denying this request, the applicant is not being denied use of his property, and there are other alternatives.

- b.** Applicant: Kim McFadden
9693 Bonnie Briar
White Lake MI,48386
- Location: **9120 Buckingham**
White Lake, MI 48386 identified as 12-14-280-014
- Request: The applicant wishes to construct a second-story addition on an existing one-story home, and add an attached garage, that will require variances to Article 3.1.6.E, R1-D Single Family Residential Front-Yard setback, Side-Yard setback, Lot Coverage, and Lot Size. A variance to Article 7.28.A, Repairs and Maintenance to Non-Conforming Structures, will be required due to both the value of improvements and the increase in cubic content.

Ms. Spencer noted for the record that 31 owners within 300 feet were notified. 1 letter was received in favor, 1 letter were received in opposition and 0 letters was returned undeliverable from the US Postal Service.

Property Description

The approximately 0.235-acre (10,250 square feet) parcel identified as 9120 Buckingham is located within the English Villas subdivision on Pontiac Lake and zoned R1-D (Single Family Residential). The existing house on the property utilizes a private well for water and the public sanitary sewer system for sanitation. The double lot (Lots 113 and 114) contains 95 feet in width at the front property line.

Applicant's Proposal

Kim McFadden, the applicant, is proposing to construct a two-story addition to the existing 878 square foot house. The project involves adding 450.5 square feet to the first floor and constructing a 1,262.5 square foot

second story on the existing dwelling; the total size of the house with the addition would be 2,591 square feet. A four-car, two-story garage addition is also proposed to replace the existing 440 square foot single-story detached garage. Including the second story the new garage would be 2,184 square feet in size. The 66 square foot covered area identified as “portico” on the plans would connect the two structures. The garage would be part of the principal structure if connected to the house. Therefore, the total size of the proposed structure is 4,775 square feet, an increase in 3,897 square feet.

Planner’s Report

Currently the existing house is nonconforming to setbacks; the structure is located 1.2 feet from the west side lot line and 15.8 feet from the front lot line. A minimum 10-foot side yard setback and 30-foot front yard setback are required in the R1-D zoning district. The parcel is also nonconforming due to a 1,750 square foot deficiency in lot area; the minimum lot size requirement is 12,000 square feet in the R1-D zoning district.

Article 7, Section 28 of the Zoning Ordinance states maintenance to nonconforming structures cannot exceed fifty percent (50%) of the State Equalized Valuation (SEV) in repairs in any period of twelve (12) consecutive months in order to retain its legal nonconforming status. Based on the SEV of the structure (\$3,680), the maximum extent of improvements cannot exceed \$1,840. The value of the proposed work is \$165,000, which far exceeds the allowed value of improvements by 8,967%. Further, Article 7, Section 28 of the Zoning Ordinance does not allow the cubic content of nonconforming structures to be increased. Additionally, Article 7, Section 23 of the Zoning Ordinance states nonconforming structures may not be enlarged or altered in a way which increases the nonconformity.

According to the Building Department, the current garage cannot support the proposed addition. The applicant would demolish the existing garage and attach the new garage to the house with a roofed structure. The proposed lot coverage is 23.61% (2,420.5 square feet), which is 3.61% (370.5 square feet) beyond the allowable limit (2,050 square feet). As proposed, the addition at its closest point would be located 18 feet from the road right-of-way, requiring a variance of 12 feet from the required 30-foot front yard setback.

The northwest corner of the existing structure and proposed second story addition is located 1.2 feet from the side lot line. Article 7, Section 27.vii of the Zoning Ordinance prohibits the Zoning Board of Appeals from granting a variance to permit a setback of less than five feet from a side lot line to ensure access for fire equipment and other emergency vehicles.

Ms. McFadden was in attendance to represent her case. The side lot line is 1.4 feet from the house. She said the land will not hold a basement, and it will be lost in new construction. She also said she would put in a fire wall as a fire retardant, for safety purposes. The property next door has a driveway where the Fire Department could get vehicles into in case of emergency. This neighbor also signed the petition in favor of the new home.

Mr. Dennis Strelchuck was also in attendance to represent the applicant. He said that the lot coverage of 20% is not well founded in the ordinance. He said the new modifications will be an improvement to the area, and he didn’t think the ordinance was meant to apply to structures like this one. In regards to variance for Article 7, Section 28.A, Mr. Strelchuk said that there is an extenuating circumstance there. The previous owner was infirm, and The Assessor lowered the parcel at request of the previous owner, so it wouldn’t be a financial burden. The applicant inherited the assessment. A petition with 71 neighbors in approval of the new construction was submitted to the ZBA, and that should be taken into account.

Ms. McFadden added that when she came before the ZBA in January 2020, she was asked to prove the structure was sound by a structural engineer, and a letter from Lopez Engineering was submitted to the Planning Department, stating the current home was structurally sound.

Mr. Quagliata said the intent of Article 7, Section 28 of the zoning ordinance applies to structures like this. When the value of the building is so low, expanding the nonconformity perpetuates it for years to come. The intent is over time, nonconformities will be reduced or eliminated. In regards to the lot coverage standard, if a new house were built on the property in a different location and all zoning requirements were met, the Planning Department can administratively approve up to 30% lot coverage. This is because the lot has sanitary sewer connection. There is nothing stopping the neighboring property owner to the west from building 5' from the lot line, it's in their rights. With the 1.2' setback as shown on the applicant's survey, there would be only 6.2' between a structure. The Fire Department would need 10' for access to lay hose in event of a fire to get around structures. The current neighboring property may have more than that right now, there would be nothing stopping a future owner from building an accessory structure five feet from the side lot line.

Mr. Strelchuk said his client did not contribute to any nonconformities that weren't already present at the property.

Mr. O'Neil said the current structure is legal non conforming, and the applicant was proposing changes that are going to further non conformities. He also said the Assessor did not lower the assessment for the home arbitrarily, or based on the former's owner financial situation, and Mr. Strelchuk's previous comment regarding that was incorrect. The value is what the Township Assessor felt the structure was worth.

Mr. Strelchuck said the assessment isn't close to the value of the property. Mr. Quagliata said there's two different portions of the assessment; the building value and the land value. The land value is not included in the value of the building that is calculated for the 50% for the repairs and maintenance to a nonconforming structure. There is also nothing in the zoning ordinance that requires a single-family home to have a basement.

Ms. Spencer opened the public hearing at 8:08 P.M. She read a petition of approval of the new construction from 71 homeowners. She also read one letter of opposition from Tom Johnson, 9136 Buckingham.

Michelle Wise, 9481 Bonnie Briar. She signed the petition in favor of the new home. She lived in the neighborhood for 30+ years, and said the applicant is trying to approve the property she bought.

Ms. Spencer closed the public hearing at 8:16 P.M.

Mr. Walz said that the letter on file from the Fire Marshal and Chief recommending denial of the variance of the side lot line is very significant. Part of the ZBA's responsibility is the health, life and safety for not only the occupant of the home, but for those other houses around the home.

Mr. Powell said it was his impression that each of the 71 people who signed the petition were in favor of it, and he would have taken them at their word if they each spoke that evening to speak for the case. He also clarified that the letter from the Fire Department wasn't a denial of all the variances proposed, it was only in regards to the side yard lot line variance.

Ms. Spencer said that Article 7 strictly prohibits the ZBA from granting a variance that would allow a setback of less than 5' from the side lot line. Mr. Quagliata said while the 1.2' side yard setback was existing, the addition would also be 1.2' from the side lot line, so the new construction was a problem.

Mr. Powell said he had been out to the site, and the front yard setback appeared to match the other's in the neighborhood, he could see a need for a variance there. With Article 7, Section 28.A, what was proposed exceeded what was reasonable. When he reviewed the case, he looked at whether the home was worth saving. He reviewed the letter from Lopez Engineering, and noticed the letter did not address the structure, it only addressed the foundation. From his engineering opinion structure that supports the roof was not sufficient to support a second-floor load and a new roof. The exterior walls cannot support the loads proposed. The foundation was the only part of the home that could be saved, and it would not be proper of the ZBA to grant variances to save the foundation only. The entire structure could be rebuilt to not need any variances, if the new structure was relocated on the lot. The value was in the property, not in the current structure on it.

Mr. Walz MOTIONED to deny the variances requested by Kim McFadden for Parcel Number 12-14-280-014, identified as 9120 Buckingham Road, due to the following reason(s):

- Since the subject property is a double lot there are legal alternatives available to the Applicant to make improvements to the existing structure or build a new house in accordance with the Zoning Ordinance.
- The Applicant has not demonstrated a hardship or practical difficulty that justify the variances being requested.
- The Applicant's alleged need for the requested variances is self-created.
- The proposed project would result in substantial adverse impacts on properties in the vicinity.
- The Applicant has failed to demonstrate the requested variances are the minimum necessary.
- The public safety concerns identified by the Township Fire Department.
- The requested variances would increase the cubic content of the nonconforming structure by 3,897 square feet and increase the extent of the nonconformities.
- The value of the proposed improvements exceeds the allowed value of repairs and maintenance to a nonconforming structure by 8,967%.

Mr. Powell SUPPORTED, and the MOTION CARRIED with a roll call vote (5 votes):

Powell: YES; for the reasons stated in the denial motion

Schillack: YES; for the reasons stated, and for the safety aspect with regards to proximity to the side yard lot line.

Walz: YES; for the reasons stated.

Spencer: YES; there are legal alternatives available and there was no existing hardship or practical difficulty stated. This was a self created hardship, and because of the public safety concerns of the Fire Marshal and Chief.

Dehart: YES; for the reasons stated.

Other Business:

None.

Adjournment: Mr. Walz **MOTIONED** to adjourn the meeting at 8:45 P.M. Ms. Dehart **SUPPORTED**. All in favor.

Next Meeting Date: September 24, 2020