

**WHITE LAKE TOWNSHIP
ZONING BOARD OF APPEALS
MARCH 23, 2023**

CALL TO ORDER

Chairperson Spencer called the meeting to order at 7:00 P.M. She then led the Pledge of Allegiance.

ROLL CALL

Present:

Clif Seiber
Niklaus Schillack, Vice-Chairperson
Jo Spencer, Chairperson
Debby Dehart
Michael Powell, Township Liaison

Others:

Justin Quagliata, Staff Planner
Dave Hieber, Assessor
Hannah Micallef, Recording Secretary

8 members of the public present

APPROVAL OF AGENDA

MOTION by Member Schillack, seconded by Member Powell, to approve the agenda as presented. The motion CARRIED with a voice vote: (5 yes votes).

APPROVAL OF MINUTES

A. Zoning Board of Appeals Regular Meeting of February 23, 2023

Member Schillack and Member Seiber had several clerical errors they wanted clarified:

- Member Seiber wanted Page 7, Paragraph 8 to read: “sign on the easterly side.”
- Member Schillack wanted Page 6, Paragraph 8 to have the word “recessed” removed.
- Member Schillack wanted to clarify his reasoning on Page 8, paragraph 2 to read: In regards to the northern parking spots on the other side of the service drive.

MOTION by Member Seiber, seconded by Member Powell, to approve the minutes of February 23, 2023 as amended. The motion CARRIED with a voice vote: (5 yes votes).

CALL TO THE PUBLIC

No comments from the public.

NEW BUSINESS

- A. Applicant: Michael P. Rubino & Lori Rubino
1066 Round Lake Road
White Lake, MI 48386
Location: **1066 Round Lake Road**
White Lake, MI 48386 identified as 12-35-255-019
Request: The applicant requests to enlarge and alter a nonconforming structure (house) to construct an addition, requiring variances from Article 7.23.A, Nonconforming Structures and Article 3.1.6.E, R1-D Single Family Residential Minimum Lot Width. A variance from Article 7.28.A, Repairs and Maintenance to Nonconforming Structures is also required due to both the value of improvements and the increase in cubic content.

Staff Planner Quagliata gave his report. He said there was a 13-foot discrepancy between the survey provided and the measurements of the lot provided by Oakland County.

Member Schillack asked staff which measurement on the survey was the recorded width. Staff Planner Quagliata said the 53.14-foot measurement was the recorded width and the measured width was 67 feet. On the rear yard, the measured width was 37.36 feet, but Oakland County showed the width was 25 feet.

Lori Rubino, 1066 Round Lake Road, was present to speak on her case. She said the current deck was 30 years old, and she wanted to extend the roof of her house to cover a portion of the deck and also screen in the deck.

Member Powell asked the applicant what made her property unique. Ms. Rubino said her property shape was unique.

David P. Smith, 8615 Richardson, was the surveyor for the property. He said the lot was irregular and nonconforming, and was surrounded by fences. The lot was platted in 1916. The fences had been there for over 50 years, and had been used as “acquiesced property lines” by the neighbors throughout the years.

Member Powell stated only a judge could change the line of plat.

Member Seiber said there may be a typo on Oakland County Property Gateway regarding with the rear lot width being presented as 25 feet, as the measurement scaled closed to 37 feet on the survey.

Member Powell asked Mr. Smith what he would view as the practical difficulty for the lot. Mr. Smith said the applicant was staying within the current footprint of the house and the deck, and there wasn't an objection from the neighbors.

Member Schillack said his concern was that the ZBA was not allowed to approve any projection into the 5' side yard setbacks. He wanted to know if the ZBA could legally proceed with the presented data.

Member Powell asked Mr. Smith if any part of the deck was within 5 feet of any property lines. Mr. Smith said no.

Staff Planner Quagliata said when he spoke with Mr. Smith the other day, he was told the lots on each side of the subject property were consistent with the plat. Staff Planner Quagliata asked Mr. Smith if the other two lots measured properly, how did the applicant's lot vary 13 feet. Mr. Smith did not have an answer to the question.

Chairperson Spencer opened the public hearing at 7:35 P.M. Seeing no public comment, she closed the public hearing at 7:35 P.M.

Member Powell said Mr. Smith assumed a smaller parcel with his measurements than what the actual lot measured at in order to not cause an uprising with the neighbors and what the neighbor's perceived was their property.

Member Dehart said the applicant was going to utilize the deck, and the deck was conforming. The deck would be considered a structure once the deck was enclosed.

Staff Planner Quagliata said an unenclosed deck could be as close as 5 feet to a side property line. Once covered or enclosed, the deck was subject to the principal building setbacks.

The ZBA discussed the standards from Article 7, Section 37 from the ClearZoning Ordinance:

A. Practical Difficulty

- Member Seiber said the size of the lot was a practical difficulty. The lot was undersized for the width standards required in the R1-D Zoning District.
- Chairperson Spencer said adding on to the house by enclosing the deck would make the property worth more, and the ZBA could not approve a request for the reason of an applicant's economic gain.
- Member Schillack saw a practical difficulty based on the dimensions of the lot.

B. Unique Situation

- Member Schillack said the lot met the definition of a unique situation based on the data presented.
- Member Powell said the current zoning ordinance was not in affect when the lot was platted or when the house was built.

C. Not Self-Created

- Chairperson Spencer said if the proposed enclosure was moved, a variance wouldn't be needed.
- Member Dehart said the applicant didn't create the lot.
- Member Schillack said he didn't believe the property or the location of the house was self-created by the applicant.

D. Substantial Justice

- Member Schillack said the applicant's house would be similar to the house on the south, and wouldn't block lake views of the neighbors.

E. Minimum Variance Necessary

- Member Dehart said the applicant was requesting a minimum variance.
- Member Schillack said he trusted the survey, but would have liked to have the confidence the proposed enclosure was within the legal limits.

Member Seiber said the question was what measurements would the ZBA rely on. There were the platted measurements from 1917, which were over 100 years old. The County records seemed wrong as well. The survey was signed and sealed by a professional surveyor. Therefore, he believed the survey would have the most reliable measurements.

Mr. Smith asked to address the Board. Chairperson Spencer said no, per the bylaws the applicant's time to make a presentation had passed.

MOTION by Member Powell, seconded by Member Schillack to allow Mr. Smith to make a comment.

The motion carried with a roll call vote: (5 yes votes)

(Powell/yes, Schillack/yes, Dehart/yes, Spencer/yes, Seiber/yes)

Mr. Smith said the deck abutted a tree on the west side yard property line and wouldn't be able to relocate the deck due to the tree.

MOTION by Member Powell, seconded by Chairperson Spencer to deny the variances requested by Michael P. Rubino and Lori Rubino for Parcel Number 12-35-255-019, identified as 1066 Round Lake Road, due to the following reason(s):

- **The minimum variance the ZBA could provide was no variance, and the applicant could still achieve an enclosure without requesting a variance.**

The motion FAILED with a roll call vote: (2 yes votes)

(Powell/yes, Spencer/yes, Seiber/no, Schillack/no, Dehart/no).

MOTION by Member Powell, seconded by Member Schillack, to approve the variances requested by Michael P. Rubino and Lori Rubino from Article 3.1.6.E and Article 7.23.A of the Zoning Ordinance for Parcel Number 12-35-255-019, identified as 1066 Round Lake Road, in order to construct an enclosed porch. A variance from Article 7.23.A is granted to allow the addition to encroach 3.2 feet into the required setback from the north side lot line. A 26.86-foot variance from the required lot width is also granted from Article 3.1.6.E. This approval will have the following conditions:

- **The Applicant shall obtain all necessary permits from the White Lake Township Building Department.**
- **Prior to issuance of a building permit, a revised signed and sealed survey with precise dimensions shall be submitted to the Building Department.**
- **An as-built survey shall be required to verify the approved setbacks and lot coverage.**

The motion CARRIED with a roll call vote: (4 yes votes)

(Powell/yes, Dehart/yes, Spencer/no, Schillack/yes, Seiber/yes)

OTHER BUSINESS

- A. Applicant: Joseph A. Laflamme
1780 Mead Lane
White Lake, MI 48386
Location: Parcel Number 12-15-426-026
Request: The applicant requests a waiver of the variance application survey requirement.

Staff Planner Quagliata gave a summary of the request.

MOTION by Member Schillack, seconded by Member Dehart to deny the request to waive the survey requirement for this non-submitted variance application for the following reasons:

- 1. There was an application process for a reason, so that everyone had a fair and equal opportunity to request a desired variance.**
- 2. There were application requirements for a reason, so that data was available to make informed and sound judgement.**
- 3. There was an application fee for a reason, because all matters before the ZBA cost the Township residents money, and that included staff time.**
- 4. Discussing details of the matter without a completed application in front of the ZBA circumvents the Township's professionally trained staff.**
- 5. The ZBA did not provide free legal advice.**
- 6. Any discussion of the matter could imply how the ZBA would vote on a potential application, and therefore opened the Township to legal exposure if the ZBA chose to vote in a different way from anything discussed in detail at this meeting.**

The ZBA discussed the concept of the 4:1 depth to width ratio as stated in the Zoning Ordinance.

Assessor Hieber said he saw nonconforming properties apply for lot splits for various reasons. Many split applications came before him the Assessing Department wouldn't have jurisdiction to approve; those applications would be in ZBA's purview. He stated the goal to address these issues was not to waste both the taxpayer's money and Township resources.

Member Schillack stated discussing details of this matter in this public, quasi-judicial forum was bad for the following reasons:

- 1. It would undermine an established Township process designed to be fair to all residents of White Lake.**
- 2. It would show favoritism to one resident when others have not been given the same privilege.**
- 3. It would set a dangerous precedent through which people could come before the ZBA and circumvent experienced and professional Township staff to gain opinions and gauge votes.**
- 4. It could imply the ZBA would vote a certain way, and if an individual acted on those implications while the ZBA voted a different way, it could open the Township to legal exposure.**

For those reasons, Member Schillack stated he refused to discuss any details of the matter at hand, and he would vote no on any motion about a recommendation. He would vote "yes" to dismiss the matter, and to be clear, this was not a case before the ZBA, since there was not a completed application in front of them. If a completed application came before the ZBA, he would be glad to discuss the matter at hand in great depth, offer guidance, and vote on the merits of the case at a future provided date.

**The motion carried with a roll call vote: (5 yes votes)
(Schillack/yes, Dehart/yes, Powell/yes, Spencer/yes, Seiber/yes)**

ADJOURNMENT

MOTION by Member Dehart, seconded by Member Schillack, to adjourn at 8:31 P.M.

The motion carried with a voice vote: (5 yes votes)

NEXT MEETING DATE: April 27, 2023