

Mason County Planning & Zoning Department

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March 1, 2017

Minutes of the Mason County Zoning Board of Appeals meeting on March 1, 2017, 4:30 p.m.
held at 102 E. 5th Street, Scottville, MI.

MEMBERS PRESENT: Jerry Jensen, Ralph Lundberg, Richard Anderson, Cary Shineldecker,
Joanie Wiersma

MEMBERS ABSENT: None

OFFICIALS PRESENT: Mary Reilly, Cayla Christmas

ELECTION OF OFFICERS: Jerry Jensen called meeting to order at 4:30 pm and turned the meeting over
to Mary Reilly for election of officers.

Mary Reilly asked for nominations for Chairman.

Ralph Lundberg nominated Jerry Jensen. Second by Richard Anderson. Mary Reilly asked if there were
any other nominations. Nominations closed.

Jerry Jensen elected Chairman in a unanimous vote, 5 yes 0 no.

Jerry Jensen opened the floor for nominations for Vice Chairman.

Richard Anderson nominated Ralph Lundberg. Second by Cary Shineldecker. Jerry Jensen asked if
there were any additional nominations. Nominations closed.

Ralph Lundberg elected Vice Chairman in a unanimous vote, 5 yes 0 no.

Jerry Jensen asked for nominations for Secretary.

Ralph Lundberg nominated Joanie Wiersma. Second by Cary Shineldecker. Jerry Jensen asked if there
were any additional nominations. Nominations closed.

Joanie Wiersma elected as Secretary in a unanimous vote, 5 yes 0 no.

A motion was made by Ralph Lundberg with 2nd by Joanie Wiersma to approve the meeting minutes of
December 21, 2016 as amended. Motion carried, 5 yes 0 No.

Additions to Agenda: None

Public Comment: None

Correspondence: None

A public hearing was held for #PZ17010, a dimensional variance for an addition to a
nonconforming dwelling. Kay Bodeck has requested 4' variance from 25' required side yard
setback (west side) for a 12' x 24' addition to a garage. The property is located at 147 E.
Sauble Drive, Free Soil, Free Soil Township, Section 19, Cedar Shores Subdivision, Lot 9,
Parcel 005-300-009-00. Greenbelt (GB) District. There was no correspondence for or against.

Mary Reilly stated she approved a permit off the back of the existing dwelling as it was up to 10% of the square footage of the existing dwelling and it did not worsen the non conformity. Mary Reilly presented the staff report (portion below), the site plan, and photos.

FINDINGS OF FACT:

1. The owner wants to extend the garage to the north (toward the road).
2. The garage extension will not worsen non conformity and retain the existing setback of 21' from the west property line.
3. The owner was administratively approved two small additions in the rear yard. The total of both additions does not exceed 10% of the square footage of the house or worsen non conformity.
4. The dwelling is conforming in size 2300 sf.
5. The lot is conforming in width (100' min required) and area (20,000 sf required, 33,000 sf actual)
6. The property was R-1 up until 2004—which required 10' side yard setbacks.

PHYSICAL CHARACTERISTICS:

1. The property is located directly on the Sauble River
2. Well is located in the rear yard
3. Septic is located in the front yard (east side)
4. The home and proposed building site is relatively flat; there is a fairly abrupt bank on the Sauble River (approximately 10')

A motion was made by Cary Shineldecker with 2nd by Richard Anderson to accept the Staff Report into the record. Motion carried, 5 yes 0 no.

Jerry Jensen opened the public hearing.

Kay Bodeck stated there was no where else for them to add on to their existing dwelling because of the septic tank and river.

Cary Shineldecker asked if the existing garage was built at the same time as the house.

Kay Bodeck stated she does not know but thought it may been added on at some point.

Jerry Jensen stated the neighboring house is 21' off the property line, so it appears that the setback was 10' when the houses were built.

Cary Shineldecker asked the applicant if the 24' width of the garage included the eave.

Kay Bodeck stated the measurement included the eave.

Cary Shineldecker stated allowing the variance won't worsen the non conformity of the dwelling. Jerry Jensen agrees.

Jerry Jensen stated the addition fits within the current dimensions and will not worsen the non conformity. The problem was created by the change in zoning.

Ralph Lundberg stated it was not the fault of the applicant that the zoning changed from R-1 to Greenbelt.

Cary Shineldecker stated it would not make sense to have the applicant add a 12' x 20' addition to an existing 24' wide structure in order to meet zoning requirements.

Jerry Jensen closes the public hearing.

Jerry Jensen read the standards for granting a variance from Section 24.05 (3) a,

- A. **The strict compliance with the ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owners within the same zoning district.** The strict enforcement of the ordinance would require the owner to build a 20' X 12' addition rather than a 24' X 12'. A 20' X 12' would deprive the owner of rights enjoyed by others. Nonconformities will occur when zoning is changed and the ZBA has to deal with unique issues caused by a change in zoning district. Meets the standard, 5 yes 0 no.
- B. **The conditions and circumstances unique to the property were not created by the owner or his predecessor in title.** The house was constructed in 1984 under Residential zoning (R). The change in the zoning ordinance from R to GB is not a circumstance created by the owner. Meets the standard, 5 yes 0 no.
- C. **The requested variance will not grant special privileges that are denied other properties similarly situated and in the same zoning district.** There have been similar situations with existing structures where the zoning has changed. The variance would not grant special privileges. Meets the standard, 5 yes 0 no.
- D. **The requested variance will not be contrary to the spirit and intent of this Zoning Ordinance.** When zoning is updated and changed, it sometimes creates problems that the ZBA must look at and decide if variances can be granted. This variance will not be contrary to the spirit and intent of this Zoning Ordinance. Meets the standard, 5 yes 0 no.

A motion was made by Cary Shineldecker with 2nd by Richard Anderson to approve application PZ17010 and grant a 4' variance from the required 25' side yard setback on the west for a 12' X 24' garage addition to an existing nonconforming dwelling. Motion carried, 5 yes 0 no.

A public hearing was held for a zoning ordinance interpretation for application PZ17013 for Daniel and Melody Root. The interpretation relates to property located in the Rural Estates (RE) zoning district: Riverton Township, 7 Acres M/L, parcel 011-15-011-00, address 4964 S. Stiles Rd (owned by Eric and Karen Jefferies). No correspondence for or against received.

Jerry Jensen informed the ZBA that interpretations apply to the entire area under County Zoning, not just one parcel. Interpretations are very different from a variance in that the decision has immediate effect and can then be applied as law until the ordinance is clarified.

Mary Reilly stated that a second opinion by a professional planner or attorney is always requested for an interpretation due to the serious nature of the matter.

The applicant has requested an interpretation of 1) the terms "Convalescent Homes" and "adult foster care large group homes" as they would apply to the use of this subject property. The property is zoned Rural Estates (RE) which allows Convalescent Homes as a special land use but not adult foster care large group homes; and 2) if two adult foster care small group homes can legally operate within the same structure as long as they are separate and distinct, such as a men's and a women's home.

Mary Reilly presented with relevant ordinance language from Section 24.05 (2.a) for the ZBA to hear interpretations.

Mary Reilly read the definition of a Convalescent Home.

Mary Reilly sites Section 6.03 (19), the Rural Estates District lists Convalescent Homes as being allowed under Special Land Uses. Mary Reilly also points out that an Adult Foster Care Home that has 6 or fewer residents is considered as a residential use and is allowed in Rural Estates Districts.

Mary Reilly points out Adult Foster Care Large Group Homes (7-20 residents) are not permitted in Rural Estate Districts. And read the definition for Adult Foster Care Large Group Home.

Mary Reilly presented the requirements for a Convalescent Home in Section 17.18.

Mary Reilly referenced the opinion from Wade Trim on the two interpretation questions.

Jerry Jensen opens the public hearing.

David Root has interpreted the terms Convalescent Home and Adult Foster Care Large Group Home as meaning the same thing. He is requesting the ZBA clarify the definition of a Convalescent Home.

Ralph Lundberg asked David Root if he has contacted the State of Michigan about permits.

David Root stated he did speak with the State of Michigan and they require nothing for a 6 person or less home. David Root noted that the State of Michigan does not recognize the term "Convalescent Home" as a distinct license.

David Root stated that he could provide hospice care and palliative care within an Adult Foster Care Large Group Home. Hospice care and palliative care could be done in a Nursing Home or an Adult Foster Care Home. A Hospice facility is most often licensed as a Nursing Home.

Eric Jefferies, property owner, stated that perhaps Adult Foster Care Large Group Homes were omitted from special land uses in Rural Estates Districts by mistake or by oversight. He pointed out that in the Residential district, Adult Foster Care Large Groups homes are a permitted use and Convalescent Homes are a special land use which infers that Convalescent Homes are a more intense use.

Ralph Lundberg stated all special land uses must be listed in the district that they are allowed. If they are not listed there, there is an automatic conflict. The omission of a special land use implies the special use is not allowed in that district. The ZBA cannot grant use variances.

Cary Shineldecker adds that the omission implies purpose or intent rather than oversight.

The ZBA discussed and agreed that the Planning Commission will need to look into the definition of a Convalescent Home and clarify that definition because it does not match up with a state license. The ZBA discussed that if an applicant applies for a "Convalescent Home" but is licensed by the state as a Nursing Home or an Adult Foster Care Large Group Home, it will set up a conflict within the ordinance.

Jerry Jensen asks "Can two adult foster care small group homes legally operate within the same structure as long as they are separate and distinct, such as a men's and a women's home?"

Ralph Lundberg and Cary Shineldecker were initially in support of this idea so long as the two were separated.

Jerry Jensen stated that the intent of the ordinance is to limit the amount of people in the building in that zoning district.

Jerry Jensen closed the public hearing.

A motion was made by Ralph Lundberg with 2nd by Joanie Wiersma that Convalescent Homes and Adult Foster Care Large Group Homes are two distinct entities and are not interchangeable. Motion carried, 5 yes and 0 no.

The board moved on to the question of whether two separate and distinct small group adult foster care homes could operate within the same facility.

Cary Shineldecker believes two adult foster care small group homes could operate under the same structure as long as they are legally licensed as separate by the state.

Ralph Lundberg said if the state will license each home as a separate home, then they are considered two separate homes.

Mary Reilly asked if that would be considered a large group home “in the eyes of zoning”.

Richard Anderson states in the eyes of zoning the building is one unit.

Jerry Jensen states the zoning ordinance’s intent is to limit the number of persons in a single facility in that zoning district. Even if the state licensed each home individually, the zoning ordinance states there is not to be more than 6 people living in one facility in the RE district.

A motion was made by Jerry Jensen with 2nd by Richard Anderson that two Small Group Adult Foster Care homes cannot operate separately within the same structure in the RE district. Motion carried, 5 yes and 0 no.


Zoning Director’s Report: Meeting times will be switching to 7:30 pm April 1st.

Motion made by Jerry Jensen with 2nd by Ralph Lundberg to amend the bylaws to move meeting times from 7:30 pm to 7:00 pm April 1 through October 31. Motion carried, 5 yes 0 no.

Planning Commission Report: Cary Shineldecker brought the Board up to date on the zoning ordinance – electronic signs – the board is currently split on whether to allow them or not.

There was no public comment.

Meeting adjourned at 6:10 pm


Joanie Wiersma
Secretary, Zoning Board of Appeals