

**APPROVED**  
**Minutes Approved, November, 9, 2017**

**MELROSE TOWNSHIP**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF NOVEMBER 2, 2017**

CALL TO ORDER: The meeting was called to order at 7 pm by Ch. Errol Lee

ROLL CALL: Members Present: Ch. Lee, Todd Reeves, Lyon Stephens, Bart Wangeman, David Beier, Zoning Administrator - Randy Frykberg and Recording Secretary - Bunny Marquardt

APPROVAL OF AGENDA: David B. made the motion and Todd R. seconded to approve the Agenda. All Ayes

APPROVAL OF OCTOBER 12, 2017 MINUTES: Bart W. made the motion and Todd R. seconded to approve the minutes of Oct. 12, All Ayes

Ch. Lee read the scheduled Public Hearings for this meeting and gave the procedures for the meeting. We will hear from Randy first and then from the applicant and then commits (each comment is allowed 5 minutes) and then close the Public Hearing and the Board will deliberate. The case is:

**Case # ZBA 2-17, Allen & Windsor Freemyer Appeal of the Zoning Administrator decision that he can't issue a zoning permit to remove and rebuild a house until the ZBA grants a new variance for the project at 01042 N Shore Drive (ID# 15-010-750-012-00)**

Randy stated

On April 23, 2009 (almost 8 1/2 years ago), the Zoning Board of Appeals granted Allen and Windsor Freemyer permission to renovate/expand an existing non-conforming house at 01042 N Shore Dr (ID # 15-10-750-12-00) according to a site plan drawn by Benchmark Engineering (Job # 07-261 dated 21 January 2009) and design plans drawn by Shoreline Architecture (dated 8-21-09). No written request was presented regarding the garage or retaining wall prior to the April 23, 2009 meeting when the ZBA granted permission to, according to the minutes, "renovate/expand an existing non-conforming house".

A time frame for the validity of ZBA variances (6 months) and Zoning Permits (1 year) has been established by the Township Zoning Ordinance because conditions and ordinances change and also to prevent owners from granting their property the availability to accomplish projects at anytime in the future.

Section 12.4 (Duties and Powers of the Zoning Board of Appeals) paragraph A of the Melrose Township Zoning Ordinance reads “*Review – Shall hear and decide appeals form any review, any order, requirement, decision or determination made by the Zoning Administrator in the administration of this Ordinance*”. No further direction is provided regarding standards or how to do this.

Ch. Lee opened the Public Hearing and asked Mr. Alan Freemyer to state his case. Mr. Freemyer feels this is the same project as back in 2009 and he should be allowed to use utilize his variance and be able to complete his project as planned in 2009. The variance was used once and there was no time period. Ch. Lee asked if between 2012 and 2015 was there any construction activity on the property. Mr. Freemyer responded with his time line from 2009 thru 2014. and there was no activity on the house or garage after spring of 2012. He went on to cite case in 1929 and David B. felt this case did not relate to his case. Bart W. felt that the variance was validated due to the design work and the granting of approvals both by township and county. Randy explained that the variance given was not utilized before construction.

Ch. Lee asked if any present were in favor: The representative from W.B.Builders and Mark Felton from Charlevoix Landscaping both were in favor of using the existing variance.

Ch. Lee closed the Public Hearing.

Lyon asked if on your original request in 2009 was it to renovate house and Alan responded with it was to build a garage on its foundation and to remodel the house on the same footprint. The minutes of 2009 do not mention a garage. David B. stated that in his opinion a variance is not infinite. Bart felt even tho there was no activity there was behind the scene. Ch. Lee felt the ZBA Board should seek council and David felt we should also and Table this issue for now.

**Todd R. made the motion to Table this review and have council look at the pending Review. Motion seconded by David B. ALL AYES - MOTION PASSED.**

it was mutually agreeable to both sides to have council review the Review and get back to everyone within 60 days.

BELOW ARE SOME GENERAL FACTS FOR THE RECORD.

**GENERAL FACTS:**

1. April 23, 2009: ZBA approves variance to “renovate/expand an existing non-conforming house at 01042 N Shore Drive”.
2. April 21, 2010: Zoning Permit issued for: Renovation and addition to residence and new detached garage (Permit should not have been issued since it was 2 days short of one year but ZBA approvals are good for only six months).
3. May 5, 2011: Charlevoix County issues building permit for garage remodel (Permit should not have been issue since Zoning Permit had expired; they are good for one year)
4. Spring-Summer 2011: Construction on garage and retaining wall commenced

5. Spring 2012: Construction on Garage and ½ retaining wall completed.
6. September 20, 2017: WB Builders, on behalf of Freemyer, submits application to Township for work on residence that was approved by ZBA on April 23, 2009.
7. September 29, 2017 Zoning Administrator verbally told Allen Freemyer that a new approval from the ZBA is needed before he will issue a permit.
8. The Zoning Administrator believes that the ZBA approval of a project to “renovate/expand an existing non-conforming house” was not used within 6 months nor was the zoning permit used within one year.
9. Freemyer believes that he has a right to continue to construct the project.
10. The required 300’ notices were mailed on October 16, 2017 to 14 properties.
11. The required Public Hearing Notice was published in the Monday, October 16, 2017 edition of the Petoskey News Review.

**Case # ZBA 3-17, Freemyer house renovation/expansion at 01042 N. Shore Drive (Property ID # 15-010-750-012-00).**

Ch. Lee opened the Public Hearing and read that Windsor and Allen Freemyer have applied for a conforming addition to the northeast side of the house plus a variance to remove, rebuild and expand a front yard deck on the northwest side of an existing non-conforming house at 01042 N. Shore Drive (Property ID # 15-010-750-012-00). None of the proposed deck would be conforming, but the setback from the lake would be increased, but still 17’ into the waterfront setback, and the north side of the house would be 5’ from the Zoe Street right-of-way.

Randy stated that the addition is in a conforming way towards the garage and the porch on the lake side squared up the home. David B. asked if it home is same square footage just pulled back and Mr. Freemyer replied it will be the same house on the same footprint. Mike Pattullo of Shoreline Architecture & Design Stated stated that the porch is back 4 ft from the waters edge and they plan to use the same foundation if possible and plan to complete the retaining wall.

Ch. Lee asked for Public Comment and there were 2 in support. Ch. Lee closed the Public Hearing and asked Randy if there were two issues: 1) 9.6 and 2) two dimensional set back variance request. David B. stated that these lots were bought as is and are a challenge but not an extraordinary challenge. Alan stated that a year around home can make the situation for lakes better. Bart asked is the 66ft. Zoe St. road end will always be open (yes) and he thinks the applicant is trying to accommodate the situation. Alan stated that the water retention plan is part of his renovation plan.

Ch. Lee stated the following:

**The ZBA Board finds that:**

1. The lot at 01042, identified as Property ID # 15-010-750-012-00, is in the R-1 Zoning District.
2. R-1 Setback requirements are 50’ front (lakefront), 10’ side (because of the narrow width of the lot), 35’ rear and 100’ width.

3. The lot is non-conforming because it is about 62' wide and covers about 11,270 sq. ft. The district requirement is 100' wide and 20,000 sq. ft.
4. No overhangs are shown or requested in the project, so all measurements, variances and approvals refer to a zero overhang.
5. The present structure has a typical overhang of 1 foot and is shown on the drawings for the existing house, but not for the addition. According to the Zoning Ordinance, setbacks are measured from the dripline (including overhangs).
6. The covered porch of the present structure is about 28' from the waterfront. With the proposed remodeling, the porch will be moved back 5 more feet from the waterfront, making the porch 7.5 feet wide. This would require a waterfront variance of 17 feet (Section 12.4 C. of the Zoning Ordinance).
7. The proposal also expands the porch in the northwest corner of the house, to within 5' of the road right of way and 33' of the water. This would require a waterfront variance of 15' and a side yard (Zoe Street) variance of 5 feet (Section 12.4 C. of the Zoning Ordinance).
8. The request also includes adding an approximately 28' X 29' conforming addition to the northeast side of the house. This requires ZBA approval for expansion of a nonconforming use (Section 9.6 of the Zoning Ordinance).
9. Before issuance of a zoning permit, conformance with Zoning Ordinance Section 6.11, Walloon Lake Shoreline Protection Overlay District, shall be determined by the Zoning Administrator.
10. The lot is very steep, slopping 43' from the rear property line to the waterfront.
11. A detention area for roof water runoff is planned for the southeast side of the property rather than adding this water directly to the lake via sheet runoff down the steep bank as occurs now.
12. The required 300' notices were mailed on October 16, 2017 to 14 property owners.
13. The required Public Hearing Notice was published in the Monday, October 16, 2017 edition of the Petoskey News Review

Section 9.6 - Expansion of Nonconforming Use

**The Zoning Board of Appeals may permit expansion of a pre-existing nonconforming use, provided such expansion shall not be substantially detrimental to the surrounding neighborhood and contrary to the spirit and intent of the Ordinance."**

1. The proposed conforming addition to a nonconforming structure will not be substantially detrimental to the surrounding neighborhood. ALL AGREE
  - a. The Board finds that the proposed addition will meet all setbacks. All agree
  - b. The Board finds that the proposed addition will keep the structure similar to the structures in the area. ALL AGREE
  - c. The Board, therefore, finds the expansion will not be substantially detrimental to the surrounding neighborhood. ALL AGREE
2. The proposed addition northeast side conforming addition will not be contrary to the spirit and intent of the zoning ordinance. ALL AGREED

- a. The Board hereby incorporates by reference its findings of fact contained in paragraphs 1.a through 1.c. above. ALL AGREE
  - b. The Board finds that Section 1.0 of the zoning ordinance specifies the purpose of the zoning ordinance, which provision is hereby incorporated herein by reference. ALL AGREED
  - c. The Board finds that Section 6.0 A) of the zoning ordinance specifies the purpose of the R-1 Zoning District, which provision is hereby incorporated herein by reference. ALL AGREE
  - d. The Board finds that allowing the addition does “maintain social and economic stability, property values and general character and trend of Melrose Township development”. ALL AGREED
  - e. The Board, therefore, finds the proposed addition will not be contrary to the spirit and intent of the zoning ordinance. ALL AGREED
3. Based on the above findings of fact, the Board finds the standards for the addition which meets all setbacks have been met. ALL AGREE

***BART W. MADE THE MOTION THAT WE APPROVE THE PORTION OF THE REQUEST OF A NON CONFORMING USE PER THE FINDINGS OF FACT AND THE SUBMITTED MATERIALS TO ALLOW A CONFORMING EXPANSION OF A NON-CONFORMING STRUCTURE. TODD SECONDED. ALL AYES - MOTION PASSED***

**Section 12.4 C Variance Criteria:**

The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements. It shall be found by the Zoning Board of Appeals that any variance granted:”

1. **The variance will not be contrary to the public interest or to the spirit and intent of the Ordinance.** The proposed new porch further from the lake than the existing porch, with the addition toward the road on the northwest side of the house, will be set back 5 feet further from the lake (no overhang) than the existing structure. A variance of 17 feet is needed. Storm-water treatment will be improved. ALL AGREED  
David B. commented that this variance on the porch will not increase the square footage of the porch.
2. **The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district.** Residential uses are an allowed use in the R-1 District. ALL AGREE

3. **The granting of the variance will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township.** The Board finds that the proposed northwest expansion will not have a negative impact on property values, and would maintain the general character and trend of Melrose Township development. The project should improve the treatment of storm-water prior to it flowing into Walloon Lake. ALL AGREE
4. **Does the variance relate only to property under control of the applicant?**  
Yes. ALL AGREE
5. **Does the variance affect only property subject to exceptionally or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity?** The Board finds that the house was built prior to zoning and there are exceptional or extraordinary circumstances or conditions affecting this property (very steep from the road to the water, with only a small area level enough to build upon, even with major excavation and retaining walls added). 4 AGREED AND 1 DISAGREED
6. The proposed porch meets the above 5 criteria in Section 12.4 C for a variance.  
ALL AGREED
7. Granting the variance would observe the Spirit of the Ordinance and provide for substantial justice. ALL AGREED

**“Due to the findings of fact as stated above, Todd R. made the motion to approve Windsor and Allan Freemyer’s Zoning Variance Application for a conforming addition to the northeast side of the house plus a variance to remove, rebuild and expand a front yard porch on the northwest side of an existing non-conforming house at 01042 N. Shore Drive (Property ID # 15-010-750-012-00). This approval is based upon:**

1. **Zoning Variance Application submitted by Alan Freemyer, dated October 5, 2017;**
  2. **Topographic Survey & Proposed Site Plan, dated 5 October 2017, 2017 by Benchmark Engineering;**
  3. **Proposed elevations Sheets # A-2.0 and A-2.1 by Shoreline Architecture, printed October 5, 2017; and**
  4. **Landscape Plan, dated October 16, 2017 drawn by MJF**
- Bart W. seconded the motion. ALL AYES, MOTION PASSED**

**Case # ZBA 4-17, Stephen Banks house renovation/expansion at 01956 N. Shore Drive (Property ID # 15-010-730-006-00).**

Ch. Lee opened the Public Hearing and read that Matt Stuck, Conquest Builders, on behalf of Stephen Banks, has applied for: 1. An approximately 360 square foot conforming addition to the north side, or N. Shore Drive side, of the non-conforming house (dimensions are not in the application and are wrong on Presley Architecture drawing); 2. A conforming 7' 3" X 4' basement access door to the east side of the house and; 3. A small 2' X 5' nonconforming "fill in" to the west side of the house (This "fill in" is shown on the print but not on the application) at 01956 N. Shore Drive (Property ID # 15-010-730-006-00). ZBA Permission to expand a non-conforming structure in a conforming way is required for items # 1 and 2 above (Section 9.6 of the Zoning Ordinance), and a 3' 6" variance is needed for item # 3 above (Section 12.4 C of the Zoning Ordinance).

The Benchmark partial Topographic Survey indicates that a portion of First Street does not appear to have been vacated. The house may be on the west property line and the garage may be in the road right-of-way. This is not shown on the Presley Architecture drawing.

Stephen Banks added that the original structure was built 110 years ago and has been remodeled several times and that now the entire house will be remodeled to be a year around home. Matt Stuck from Conquest Builders added that the vinyl siding will be removed to now have the look of what it was back then.

Randy stated there were no responses to the letters sent out and Ch. Lee closed the Public Hearing.

David B and Ch. Lee both agreed that if possible the ZBA tries to eliminate variances of non-conforming structures.

Ch. Lee went on to the Findings of Facts:

The ZBA has requested some assistance in preparation of findings of fact (FOF). The following draft may be considered, modified, used or totally revised by the Zoning Board of Appeals during your deliberations following the hearing:

**The ZBA Board finds that:**

1. The lot at 01956 N Shore Drive, identified as Property ID # 15-010-730-006-00, is in the R-1 Zoning District and the Walloon Lake Shoreline Protection Overlay District. ALL AGREED
2. R-1 Setback requirements are 50' front (lakefront), 10' side (because of the narrow width of the lot), 26.3' rear (because of the narrow length) and 100' width. ALL AGREED
3. The lot is non-conforming because it is about 51' wide and covers about 7,575 sq. ft. The district requirement is 100' wide and 20,000 sq. ft. ALL AGREED

4. No overhangs are shown or requested in the project, and all measurements, variances and approvals refer to the drawings. According to the Zoning Ordinance, setbacks are measured from the dripline (including overhangs). ALL AGREED
5. Before issuance of a zoning permit, conformance with Zoning Ordinance Section 6.11, Walloon Lake Shoreline Protection Overlay District, shall be determined by the Zoning Administrator. ALL AGREED
6. Component 1 on the project, the approximately 361sq. ft. conforming addition to the nonconforming house, requires ZBA approval of expansion of a Nonconforming Use (Section 9.6 of the Zoning Ordinance). ALL AGREED
7. Component 2 of the project, the conforming 7' 3" X 4' basement access door to the east side of the house, requires ZBA approval of an Expansion of Nonconforming Use (Section 9.6 of the Zoning Ordinance). ALL AGREED

**CH. LEE STATED THAT :Section 9.6 - Expansion of Nonconforming Use**

**The Zoning Board of Appeals may permit expansion of a pre-existing nonconforming use, provided such expansion shall not be substantially detrimental to the surrounding neighborhood and contrary to the spirit and intent of the Ordinance."**

1. The proposed 2 conforming additions to a nonconforming structure will not be substantially detrimental to the surrounding neighborhood. ALL AGREED
  - a. The Board finds that the proposed 2 conforming additions will meet all setbacks. ALL AGREED
  - b. The Board finds that the proposed addition will keep the structure similar to the structures in the area. ALL AGREED
  - c. The Board, therefore, finds the expansion will not be substantially detrimental to the surrounding neighborhood. ALL AGREED
3. The proposed two conforming additions will not be contrary to the spirit and intent of the zoning ordinance. ALL AGREED
  - a. The Board hereby incorporates by reference its findings of fact contained in paragraphs 1.a through 1.c. above.
  - b. The Board finds that Section 1.0 of the zoning ordinance specifies the purpose of the zoning ordinance, which provision is hereby incorporated herein by reference. ALL AGREE
  - c. The Board finds that Section 6.0 A) of the zoning ordinance specifies the purpose of the R-1 Zoning District, which provision is hereby incorporated herein by reference. ALL AGREE
  - d. The Board finds that allowing the addition does "maintain social and economic stability, property values and general character and trend of Melrose Township development". ALL AGREE
  - e. The Board, therefore, finds the proposed addition will not be contrary to the spirit and intent of the zoning ordinance. ALL AGREE



3. Based on the above findings of fact, the Board finds the standards for the two conforming additions, which meet all setbacks, have been met. ALL AGREE

**TODD R. MADE THE MOTION THAT THIS IS A CONFORMING EXPANSION OF A NON CONFORMING USE. LYON S. SECONDED ALL AYES MOTIO PASSED**

1. Component #3 of the project is a 2' x 5' nonconforming "fill in" to the west side of the house. (this "fill in" is shown on the print but not mentioned in the application) requires a 3'x 6" variance (section 12.4C of the Zoning Ordinance).
2. The Benchmark partial Topography Surey indicated that a portion of the First Street does not appear to have been vacated. the house may be on the west property line and garage may be i the road right of way. This is not shown on the Presley Architecture drawing. The required 300' notices were mailed on Oct. 16, 2017 to 14 property owners and the Public Hearing Notice was published on Oct. 16, 2017 in the Petoskey News review. Ch. Lee read the following: **SECTION 12.4 C VARIANCE CRITERIA: The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements. It shall be found by the Zoning Board of Appeals that any variance granted:"**

1. **The variance will not be contrary to the public interest or to the spirit and intent of the Ordinance.** The proposed 2' X 5' nonconforming "fill in" to the west side of the house will probably not be contrary ALL AGREED
2. **The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district.** Residential uses are an allowed use in the R-1 District. ALL AGREED
3. **The granting of the variance will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township.** The Board finds that the proposed southwest expansion will not have a negative impact on property values, and would maintain the general character and trend of Melrose Township development. The project should improve the treatment of storm-water prior to it flowing into Walloon Lake. ALL AGREED
4. **Does the variance relate only to property under control of the applicant?** ALL AGREED
5. **Does the variance affect only property subject to exceptionally or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity?** The Board finds that the house was built prior to zoning. ALL AGREE

6. The proposed expansion meets or does not meet the above 5 criteria in Section 12.4 C for a variance. **3 voted that it does meet the criteria: Bart. W., Lyon S., & Todd R., 2 voted that it does not meet the criteria: David B . & Ch. Lee**
7. Granting the variance would or would not observe the Spirit of the Ordinance and provide for substantial justice. **3 voted that it would observe the Spirit of the Ordinance: Bart W., Lyon S., & Todd R.;** and **2 voted the it would not observe the Spirit of the Ordinance.**

After review and discussion of the above Findings of Fact, ***Lyon S. stated that Due to the findings of fact as stated above, I move to approve Stephen Banks' Zoning Variance Application for two conforming additions and one 4' 4" variance for another addition to a non-conforming structure at 01956 N. Shore Drive (Property ID # 15-010-730-006-00). No permit will be issued until the approval of First St Road End being vacated is presented to Randy. This approval is based upon:***

- 1. Zoning Variance Application signed by Matthew Stuck on October 10, 2017;**
- 2. Conquest Builders Inc. letter, signed by Matt Stuck on October 11, 2017;**
- 3. Partial Topographic Survey, dated 18 July 2017, 2017 by Benchmark Engineering; and**
- 4. Alterations to Banks Residence by Presley Architecture LLC dated 10/4/17**

***Todd R. seconded the motion. 3 Voted in favor of the Motion: Bart W., Lyon S., & Todd R.: 2 Voted against the Motion: David B. & Ch, Lee MOTION PASSED***

Next meeting will be Nov. 9th at 5 PM. Meeting adjourned at 10 PM

Respectfully submitted by: Bunny Marquardt \_\_\_\_\_

ZBA Secretary: Todd Reeves  
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