

MELROSE TOWNSHIP ZONING BOARD OF APPEALS MINUTES
MELROSE TOWNSHIP HALL

MEETING OF FEBRUARY 1, 2023

I. Call to Order/Roll Call

- A. Call to Order: Chair Lee called the meeting to order at 7:00 PM.
- B. Members present: Errol Lee, David Beier, Todd Reeves, Bart Wangeman.
- C. Members absent: Mary Pat Goldich.
- D. Staff present: Zoning Administrator Ken Lane.

II. Approval of Agenda

Motion by Member Wangeman, second by Member Beier, to approve the agenda as presented. The motion was approved unanimously.

III. Approval of Minutes

Member Beier motioned to approve the December 5, 2022, draft meeting minutes as presented, second by Member Reeves, the motion was approved unanimously.

IV. Other Matters to be Reviewed by the ZBA

Zoning Administrator Lane stated that the Zoning Board of Appeals' Rules of Procedure requires

the ZBA to elect a chair, vice-chair, and secretary at its first regular meeting of a calendar year.

Chair Lee stated that Member Reeves intends to step down as a member. After some discussion it was determined that Member Reeves will remain a member of the Zoning Board of Appeals until he notified the Township of his intention to resign.

Member Reeves nominated the following slate of officers for 2023: Errol Lee as Chair, David Beier as Vice-Chair, and Todd Reeves as Secretary. Member Beier seconded the nomination. Hearing no other nominations, the slate of officers for 2023 as presented was unanimously approved.

V. Scheduled Public Hearing

1. ZBA Case #1-2023, application by Lee Ehinger for a side yard variance to construct a new accessory building at 2073 North Shore Drive, Walloon Lake, MI 49796, tax parcel #15-010-720-013-00.

Chair Lee introduced ZBA Case #1-2023. Chair Lee opened the public hearing and provided an overview of the Zoning Board of Appeals public hearing procedure as follows: (1) Township staff comment; (2) petitioner presentation; (3) comments from the public, first from those in favor, second from those opposed; (4) close of the public hearing; (5) Zoning Board of Appeals deliberation; and (6) Zoning Board of Appeals decision. Chair Lee added that a decision by the Zoning Board of Appeals is only appealable to the Circuit Court within 30 days of the decision.

Chair Lee asked Zoning Administrator Lane to provide his comments.

Zoning Administrator Lane stated that he had not received any comments in support of or opposition to ZBA Case #1-2023.

Zoning Administrator Lane stated that this case was a side yard variance request submitted by Lee Ehinger to construct a new garage at 2073 North Shore Drive and that a memo with his opinion as to whether the request meets the Zoning Ordinance requirements was included in the meeting packets. He proceeded to go through his analysis memo.

Zoning Administrator Lane stated that he needed to clarify a portion of his memo relating to the reason for the new garage construction. He stated that Mr. Ehinger had notified him that the existing nonconforming garage on the property was 85 years old and had settled significantly. He added that Mr. Ehinger believes the garage is in need of full replacement due to the passage of time.

Zoning Administrator Lane stated that Mr. Ehinger intends to completely demolish the existing garage on the property. He added that the demolition obviously exceeds 25% of the existing structures area, so this does not constitute the repair of a nonconforming structure under Section 9.4 of the Township Zoning Ordinance. He further stated that the proposed work cannot be considered a restoration under Section 9.1 of the Township Zoning Ordinance, because the existing garage has not been destroyed or damaged by fire, wind, Act of God, or criminal act.

Zoning Administrator Lane stated that demolish the existing structure and rebuilding a new structure causes a loss of the nonconforming status of the existing garage. He added that Mr. Ehinger intends to build the new garage in the same building footprint as the existing garage after it is demolished, so a side yard variance has been requested to accomplish that.

Zoning Administrator Lane stated that Section 6.1 D of the Township Zoning Ordinance requires a 10' side yard area for accessory buildings less than 18' in height. Mr. Ehinger confirmed that the proposed new garage will be less than 18' in height.

Zoning Administrator Lane stated that the proposed location of the new garage is on or very near the side yard setback line. He added that a 10' side yard variance is required to construct the new garage in that location.

Zoning Administrator Lane went through the five variance standards under the Township Zoning Ordinance. He added that his analysis memo offered his opinion as to whether the variance request satisfied the standards contained in the Zoning Ordinance.

Zoning Administrator Lane stated that the public hearing for the variance request was properly noticed in accordance with the Township Zoning Ordinance and state law.

Member Wangeman stated that the survey included with the variance application appeared to set the proposed new garage 1' of the side yard property line. He asked the applicant to confirm that.

Lee Ehinger confirmed that the proposed garage will be located 1' off the property line.

Member Wangeman stated that a 9' side yard variance was requested based on the proposed garage location.

Chair Lee stated that the survey provided depicted the septic tank and field within Lee Street. He asked the applicant to explain that.

Lee Ehinger stated that he had had drawn the septic tank and field on the survey and the locations are not accurate.

Member Reeves asked the applicant if there were footings for the existing garage.

Lee Ehinger responded no, the garage sits on a concrete slab which he intends to reuse for the new structure.

Chair Lee asked the applicant if he would like to address the Zoning Board of Appeals.

Lee Ehinger stated that the garage had become an eyesore, and he wanted to modernize it with a new garage built in the same location.

Chair Lee asked the applicant if the proposed square footage of the new garage was 32'X30' as depicted on the submitted survey.

Lee Ehinger responded yes.

Member Reeves stated that it appeared based on the survey that the proposed new garage could be moved 9' off the property line in compliance with the required side yard area.

Chair Lee asked the applicant if Lot 13 and Lot 22 as described on the included survey overlapped. He added that he could not determine based on the survey where the property line was between the two lots.

Lee Ehinger showed the Zoning Board of Appeals where the actual property line was, and where a proposed adjusted line was depicted on the submitted survey.

Member Beier stated that the property line between the lots actually goes through the center of existing garage so two variances would be needed, a side and rear yard.

Zoning Administrator Lane stated that the ZBA could not approve a variance that would allow a structure to cross a property line, even if both properties were owned by the same person. He added that the proposed new garage must be moved the required 20' of the rear property line.

Chair Lee asked if there were any supporting, opposing, or additional comments. Hearing none, Chair Lee closed the public hearing and moved the Zoning Board of Appeals into its deliberations.

Chair Lee suggested that the requested variances do not meet the standards of the Township Zoning Ordinance and that the applicant will need to relocate the proposed new garage.

Zoning Administrator Lane suggested that the applicant apply for a boundary line adjustment to avoid having the proposed new garage cross the rear property line. He added that an adjustment is not a land division or split.

Chair Lee stated that the applicant can pursue a boundary line adjustment, and relocate the proposed garage 9' to the East to eliminate the need for a side yard variance. He added that placing a structure that close to a road could create safety issues.

The Zoning Board of Appeal discussed tabling the variance request until the applicant pursues a boundary line adjustment.

Zoning Administrator Lane stated that the ZBA should not table a decision on the side yard variance request unless it believes a rear yard boundary line adjustment will create a circumstance that will cause the side yard variance request to meet the Zoning Ordinance standards. He suggested that an approved adjustment will not change his opinion that the requested side yard variance meets the required standards.

Based on its deliberations, the Zoning Board of Appeals by consensus determined the following Findings of Fact:

1. The address of the proposed accessory building is 2073 North Shore Drive (ID #15-010-720-013-00).
2. The property is a corner lot located in the R-2 Single Family Residential District.
3. The property owner is requesting a 10' side yard variance to construct a new accessory building adjacent to the Lee Street right-of-way.
4. The property owner is completely demolishing the existing nonconforming accessory building on the property.
5. The requested variance will be contrary to the public interest or to the spirit and intent of the Ordinance because:

An approved variance will be contrary to the spirit and intent of the Zoning Ordinance. Stated purposes of the Township Zoning Ordinance include adherence to the requirements of Zoning Districts for building construction or alteration (Section 1.0). The ZBA determines that the proposed new accessory building could be located on the property in a way that will comply with side yard area requirements. Additionally, stated purposes of the Zoning Ordinance include the elimination of nonconforming structures (Section 9.7).

6. The variance does not permit the establishment within the Zoning District of any use that is not permitted by right within the district because:

An approved variance does not establish an unpermitted use. Accessory buildings are permitted in the R-2 District (Section 6.1 B 4).

The granting of the variance will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township because:

An approved variance will not cause any adverse effect. No comments from surrounding property owners or the public had been received in opposition to the variance. A garage has existed in the proposed location for many years and there is no evidence of complaints or issues in relation to it.

6. The variance does relate only to property under control of the applicant because:

An approved variance relates only to property owned by the applicant.

7. The variance does not affect only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity and have not resulted from any act of the applicant because:

Neighboring properties are similar in size to the subject property and have similar structures architecturally with similar degrees of nonconformity. Therefore, there are no exceptional or extraordinary circumstances or conditions.

Member Beier made the following motion:

Due to the findings of fact as stated above, I move to deny Case #1-2023, a side yard variance to construct a new accessory building adjacent to the Lee Street right-of-way at 2073 North Shore Drive, Tax ID 15-010-720-013-00, as depicted in the application and supporting documents submitted on December 2, 2022, because the standards of the Melrose Township Zoning Ordinance have not been satisfied.

Member Reeves seconded the motion, and it was approved unanimously by roll call vote.

V. Other Matters to be Reviewed by the ZBA

Chair Lee suggested that the Zoning Board of Appeals application form should be modified to require that all corners of a subject property be visibly marked/staked to facilitate review by members. Chair Lee added that on a previous case, it was determined that an addition was proposed to be constructed across a property line. Chair Lee stated that property lines are sometimes difficult to determine, so having visible identification markers becomes very important.

Members Goldich and Beier agreed.

Chair Lee motioned that the Zoning Board of Appeals application form be modified to require that all corners of a subject property be visibly marked/staked. The motion was seconded by Member Beier and approved unanimously.

VI. Communications and Correspondence received

Email from Marilyn Taylor in support of Case #6-2022.

VII. Zoning Board of Appeals Members

Member Gilmette suggested that if Bunny Marquardt was no longer going to serve as recording secretary, the Township should provide her with a written thank you.

Member Goldich agreed and said she would follow up with the Township Supervisor to determine if Ms. Marquardt would no longer be serving as recording secretary.

Chair Lee offered that he would serve as acting Zoning Board of Appeals secretary due to Member Reeves absence so that the previous meeting minutes can be officially approved.

VIII. Report of the Planning Commission Representative Bart Wangeman

Member Wangeman was absent. Nothing to report.

IX. Citizen Comments on Items Not Subject to a Hearing at this Meeting

None.

X. Next Meeting Scheduled

Monday, December 5, 2022, at 5:00 PM.

XI. Adjournment

At 7:32 PM.

Prepared by:

Ken Lane, Zoning Administrator/Recording Sec.

Zoning Board of Appeals Approval by:

Todd Reeves, Secretary