

**WATERVLIET CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MEETING AND PUBLIC HEARING MINUTES
SEPTEMBER 22, 2021**

Site Address: 5245 Lakeshore Dr. in the Bowe's Landing Subdivision.

Property #: 11-21-0980-0016-01-5.

Applicant: Darin M. Frieling

Request: The property currently has a 2-story frame house located on it. Mr. Frieling wishes to demolish the existing structure and replace it with a 60' X 30' structure. The proposed structure will be an accessory structure encompassing the first floor and living quarters on the second floor. As proposed, the structure will be 15' from Lakeshore Dr. and have a rear yard setback of 17 feet. Both required 10 foot side yard setbacks have been met. Watervliet Charter Township Zoning Ordinance No. 77, Article V - Schedule of District Regulations, Section 5.12 - Schedule of District Regulations - Yard, Height and Lot Size Requirements for Principal and Accessory Uses requires a roadside, or front, setback in the R1-B District of 35 feet and a minimum rear yard setback of 25 feet. Therefore, a front setback variance of 20 feet from Lakeshore Dr. and a rear yard variance of 8 feet will be required.

In addition to that, Zoning Ordinance No. 77, Article XX - Definitions, Section 20.02 (A) Accessory Uses; stipulates that all accessory structures in residential districts, whether attached or unattached to the principal structure, cannot exceed a maximum square footage of 1,000 square feet. To be constructed as planned, the garage square footage area of 1,800 square feet, will require a variance of 800 square feet.

Present: Mark Vander Linden, Carl Spessard, Stephen Myers, Robert Wallace, Thys Van Hout, Deanna Heminger (Alt.), Deane Fizzell, (Alt.).

Also Present: Don Falduto, John Gibson, Darin Frieling, Dan Frieling, Rick Neuber, Tom Scheid, Joe Stepich, Josh Fulton

Chairman C. Spessard called the meeting to order at 2:00 p.m.

Roll Call was taken.

The minutes of the July 28, 2021 meeting/public hearing and the minutes of the special joint Planning Commission / Zoning Board of Appeals meeting were read.

S. Myers made a motion to approve the minutes as read. M. Vander Linden seconded and the motion carried.

T. Van Hout made a motion to close out of regular session and enter into the scheduled public hearing. R. Wallace seconded and the motion carried.

The public hearing was opened at 2:03 p.m.

The Chairman first recognized Darin Frieling. Addressing the Board, Frieling explained that he wishes to construct the home so he could vacate the current 3 season home that he currently uses and have a 4 season home that could be used year round. He said that the home would encompass approximately 1,800 square feet and would be 15 feet from the southeastern edge of Lakeshore Dr. He did state that, in order to construct the home as planned, he would have to dig a considerable distance into the hill side but added that proper revetment structures would be used to mitigate erosion and water runoff.

C. Spessard told Frieling that he was asking for a considerable amount of variances from the current zoning ordinance and asked if he was aware of the process and considerations that are used by the Zoning Board of Appeals to grant a variance? Frieling stated he was aware of what the criteria was. Spessard then asked Frieling what was the justification for requesting the number of variances he was asking for. Frieling replied that the footprint of the existing structure would prohibit him from doing what he would like to do with the property.

R. Wallace asked if he was currently living in the house. Frieling replied that he was not living in the house full time but would be living in it more than what he typically does now. S. Myers asked Frieling what made the proposed structure an accessory structure? Frieling responded that the garage portion would be used in conjunction with the lake front property he currently owns for boat storage and other things.

Myers then asked if the photograph provided would be the exact structure that would occupy the site, if built. Frieling replied that it is not but was provided as an illustration of concept. Myers then noted that, although not measured, he estimated that the height of the bluff behind the proposed location to be approximately 20 to 25 feet. Frieling stated he did not know the exact figure but he estimated the height to be 30 to 35 feet. Myers continued that, if using the illustration provided, the top of the dormers would be approximately 37 feet in height with the ridge line extending beyond that. He further stated that the proposed 60 foot span of the structure would considerably block the view of the houses situated on top of the bluff.

At this point, C. Spessard invited audience members in attendance if they wished to comment on the topic. D. Falduto stated that he was in favor of granting the requested variance citing that the Frielings have been friends for many years and they have always maintained their property. The Chair then recognized R. Neuber who stated that he lived next door to the current Frieling home. He stated that he is building a new home at another location in the township and, once completed, he will sell the home on Lakeshore Dr. and voiced his concern about how drainage and runoff would affect the value of the property.

The proposed contractor, J. Fulton, stated that he did not believe the height of the house would block the view of the houses above the bluff, adding; "I could be wrong but we'll look into that." He also added that the water runoff should not be an issue and noted that

there is a storm sewer in the area and all they would have to do is make a new run from the proposed home into the existing system. He went further by noting that the proposed structure is more conforming than the current nonconforming structure, citing specifically that the current home is about 2 ½ feet away from the edge of Lakeshore Dr. The new one, he added, would be 15 feet away from the edge of the road.

S. Myers asked the contractor if any soil analysis had been conducted of the bluff? Fulton replied there had not and, with further inquiry, could not tell what type of soil comprised the bluff. J. Gibson inserted that the bluff's soil was comprised of sand and stated that years ago tires were used to shore up the hill side. He further stated that during heavy rain fall periods, runoff will still bring large amounts of sand out onto Lakeshore Dr. where the Berrien County Road Department must be called to remove it.

At the conclusion of audience participation, C. Spessard asked for submitted written correspondence to be read into the record. The written correspondence is attached to these minutes and are a part thereof.

At this point C. Spessard entertained a motion to close out of the public hearing and reenter the meeting. R. Wallace made a motion to close the public hearing and reenter the meeting. M. Vander Linder seconded and the motion carried.

The public hearing was closed at 2:20 p.m.

Back in regular session, C. Spessard noted that in his ten year involvement with the Zoning Board of Appeals he did not remember an instance where an increase in the size of an accessory structure was requested or considered. He further added that this was not an ordinary request, in the conventional sense, and if this variance was granted, "we probably would have no reason not to give everyone the same variance." R. Wallace stated that the request was excessive and the applicant did not demonstrate a hardship outside of not having a garage. S. Myers noted that the current structure is approximately 30 feet deep and 25 feet wide which, he added, is a standard size for a two car garage. Myers also expressed concern of the "geometry" of the lot by noting that it would only be 17 feet from the corner of the house to the top of the bluff; "It appears that it's a shear bluff at that point," and expressed interest as to why property owners above the proposed site did not express interest or concern about the proposed project. M. Vander Linden questioned the overall intent of the request stating that the project, more than an accessory structure, was a new home.

With there being no further discussion directly related to the topic, C. Spessard entertained a motion on the request.

R. Wallace made a motion to deny the variances as requested. A roll call vote resulted as follows: T. Van Hout, yea; R. Wallace, yea; S. Myers, yea; M. Vander Linden, yea; C. Spessard, yea. Motion to deny carried unanimously.

With there being no further business before the Board, T. Van Hout moved to close the meeting. S. Myers seconded and the motion carried.

The meeting was adjourned at 2:31 p.m.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Robert Lohr", with a long horizontal flourish extending to the right.

Robert Lohr
Zoning Administrator