

WATERSMEET TOWNSHIP ZONING BOARD OF APPEALS
COMMUNITY CENTER CONFERENCE ROOM

MEETING MINUTES of November 27, 2018.
Approved December 10, 2018

Called to order at 6:00 pm

Pledge of Allegiance was recited.

Members Present: Julie Mathiesen, Chair; Bill Neumann, Secretary; John Cestkowski and Joe LoMastro, Board Members; Cheryl Pytlarz, Alternate Board Member. Quorum requirements satisfied.

Attendees: Sally Thomsen and Mary Simms (Petitioners), Steve Tinti (Attorney for petitioners), David Neumann (Land Division Zoning Administrator), Dan Kline (Building Inspector/Zoning Administrator), Citizens: Pat Walsh, Jeff Pytlarz, and Tom Chase.
Agenda Approved: moved by Joe, supported by Cheryl, all in favor.

Julie convened the hearing and explained she would summarize the Petitioners' request, then ask for additional information from the Petitioners before moving into the Public Comment portion of the hearing. Following public comment, the Petitioners would have a chance to address issues raised during public comment and further general discussion would be allowed before closing the hearing.

Summary of Request: Variance to divide the lot located at E23250/E23245 South Moon Lake Road at the centerline of the road to create two lots, each with a dwelling that includes its own well and septic. One lot would have frontage on Moon Lake, the second lot would possess frontage on Little Moon Lake. Neither lot would meet the minimum size requirements specified for parcels in L-1 Districts in the Watersmeet Township Zoning Ordinance. The basis for the request is the financial hardships associated with maintaining two separate dwellings. Julie further indicated she received one letter in support of the variance request from a non-adjacent neighbor, Mike Reiels. There were no letters opposed to the request.

Presentations, Public Comment and Discussion: Sally Thomsen began by stating the letter from David Neumann denying the request for a land division contained inaccuracies, specifically with regard to her husband's retirement status. Any additional inaccuracies were not clearly delineated. Sally then referenced a list of neighbors and members of the Moon Lake Riparian Association who have no objections to her request. No copies were presented to the Board. She then read a letter from John Sarama, local realtor, also in support of her request. A copy of the letter was provided to the Board. She further commented on the future financial hardships (due to the death of her husband) she faced if not allowed to divide and sell her property as requested.

Mary Simms commented on the extent of existing non-conforming lots in the area and questioned how the requested land division would affect the area as there are many non-conforming lots.

Sally Thomsen spoke again, briefly referencing a 2005 determination by the Zoning Board of Appeals related to prior land division requests. Attorney Tinti then requested permission to simplify this information and process. He said the focus should not be the history of actions on the property, but the current situation – two self-sustaining residences separated by a road. The reason for this is the township ordinance is constantly evolving. For example, the ordinance has evolved from not allowing any rentals to allowing rentals of guesthouse to now drafting provisions allowing for short-term or vacation rentals.

Mr. Tinti argued that Public Safety, i.e. pollution, character of the area, traffic and neighborhood would not be affected by the variance request; in fact, Watersmeet would gain a tax advantage. He iterated that there is a low standard for establishing practical difficulties, i.e. insufficient setbacks. Mr. Tinti then indicated the road separating the plot (South Moon Lake Road) is a Highway by User, as defined in State Law (legal references not captured), and in reality, there are two separate lots by dint of this. The ZBA, with their decision to approve the land division, would provide the means for assigning taxable property numbers to two separate parcels already in existence.

Cheryl asked several questions of Mr. Tinti and requested further explanation. He replied the property is a lawfully existing, non-conforming lot and the ZBA should carefully analyze the spirit of the existing, applicable ordinance. Julie noted her property is bisected by a county road per an easement that allows for travel and maintenance only; she still owns the property under the road and that is included in the legal description and total acreage of the property. She asked Mr. Tinti if the same was true for South Moon Lake Road or if there was some other legal vehicle giving the county permission to operate and maintain the road that also afforded them (County) ownership? Was that the basis for his statement that the parcel has already effectively been divided into two lots? Mr. Tinti commented generally on Michigan Road laws but the specific questions were not answered.

Mr. Tinti continued his point about creating two new nonconforming lots, with the “practical difficulty” being a financial difficulty. A relatively new Michigan Statute cites practical difficulties as a substandard argument to be considered. Julie noted the financial difficulty could be considered self-created because Ms. Thomsen and her husband had built both homes on the property after purchasing it as a vacant parcel. She wondered if “self-created problem” meets the review parameters for practical difficulties.

In response, Mr. Tinti indicated the Zoning Enabling Act of 2006 (MCL 125.3604(7)) requires the township zoning ordinance establish procedures and standards for the review of all types of variances. The Watersmeet Township Zoning Ordinance Sections 9.02C and 9.03C do not satisfy that requirement as there are no review standards specified, and in fact may be redundant. The law allows the granting of other provisions, but that is not a factor for this request. Absent specific standards in the ordinance, all the ZBA needs only to consider is whether approval of the requested variance is counter to the spirit of the ordinance, secures public safety, and ensures justice is done.

The petitioners had no additional information to offer, so Julie opened the floor to public comment. Daven Neumann offered comment to add some historical perspective to the request. He said the original building permit was granted for a guest house in 2001 with a written variance allowing a main house to be built in 2003. Dave further noted the Watersmeet zoning ordinance was amended 9-19-2007 to require the main residence be built prior to construction of a guest house.

Tom Chase (Moon Lake Road), as a representative of the Moon Lake Association, asked why the variance couldn't be granted, as it is just a tax issue. He further indicated their Association does not object to and, in fact, supports the request.

Steve Tinti noted the current and prior requests to the ZBA were conducted according rules were good faith efforts to comply with procedures. He reiterated the need to consider the evolution of the zoning ordinance, again using the history of allowed rentals as an example. Julie corrected his earlier statement, noting the ordinance does not allow for rental of guest or caretaker houses. She further noted that limitation, along with the required dimensions for L-1 lots, has been in the ordinance since 1969. However, the issue of the guesthouse being rented was not under consideration as part of this hearing.

As there were no additional comments, John moved to exit the hearing, supported by Joe. All in favor. The hearing was exited at 6:37 p.m.

Board Discussion and Decision: Cheryl began the discussion by indicating she did not want to establish precedent, but wondered whether there is another lot spanning two lakes with a road dividing the properties? Julie responded that several of the properties adjacent to and near the parcel in question also possessed frontage on two lakes and were divided by the road.

Dave Neumann stated that in 14 years as Zoning Administrator, he has not seen a plot reduction like the one being requested.

Joe reiterated concerns about establishing precedent and questioned whether there could be language inserted into a decision, whether to approve or deny, that would avoid setting precedent.

Cheryl noted the plots resulting from the requested land division would be individually functioning land units (house, well, septic) and in her opinion would not set precedent, given the uniqueness of the property.

Julie agreed the situation was not typical, but not completely unique in the Township. She asked Dave Neumann how many guesthouses were on well and septic separate from the main residence. He replied that was the case for almost all of them. Julie further questioned whether there was a practical difficulty and, if so, was it a self-produced problem?

Dave Neumann expressed concerns with setting precedent for future land divisions, as there may be more properties with similar situations that we currently don't know about.

Cheryl noted there is a lack of affordable housing in the area and that should be considered.

Julie questioned whether there was enough information to make a decision or if the discussion should be tabled, noting that per the zoning ordinance, the ZBA has 30 days to make its decision. Several people noted the Township attorney wasn't present and if he were, perhaps some of the questions could be answered. Julie responded she had not asked him to attend the meeting; based on the record, the situation seems fairly straightforward. That said, some new points were introduced by Mr. Tinti.

Cheryl asked about the “spirit” of the zoning ordinance with regard to lot sizes. Would it be met if the variance were approved? She noted she was comfortable moving forward on a decision; this was not a “Watersmeet-changing” problem. Steve Tinti added the request does not pose a public safety issue.

Cheryl moved to approve the land division that would subdivide the existing parcel into two non-conforming, separately functioning lots. Seconded by John. Some additional discussion recapping previous points then vote called by the Chair:

John - Yes
Cheryl - Yes
Julie - No
Bill - No
Joe - No

Motion Failed.

Joe moved to table discussion until the Township attorney could be present or clarify introduced questions and issues. Seconded by Bill. Calendar reviewed for possible dates and next meeting tentatively set for Monday, December 10, 2018, 6:00 p.m. Joe amended his motion to table discussions until that time. Bill supported. All in favor; motion carried unanimously.

Petitioners, their attorney and several citizens left the meeting at 7:13 p.m.

Old Business: A potential quarterly meeting schedule was discussed. Tabled until December 10th meeting.

New Business: Julie discussed the need to create a form that would serve as an “application for a ZBA hearing”. Cheryl volunteered to draft a form for review. Julie indicated she had several examples from other communities that she would forward to Cheryl. She also suggested looking at the application form used by the Planning Commission to review special use requests, to see if there were any elements that should be incorporated into a ZBA application form.

No further discussions. Motion to adjourn by Cheryl, supported by Julie. Motion carried unanimously.

Meeting adjourned at 7:18 pm

Submitted by H. Bill Neumann, ZBA Sec’y