

WATERSMEET TOWNSHIP ZONING BOARD OF APPEALS
COMMUNITY CENTER CONFERENCE ROOM

Meeting Minutes of December 10, 2018
Approved January 28, 2019

Call to order at 6:00 pm

Pledge of Allegiance recited

Agenda presented

Roll Call/Members Present: Julie Mathiesen, Chair; Bill Neumann, Secretary; Joe LoMastro, Cheryl Pytlarz, and John Cestkowski. As was noted at the prior meeting, Cheryl is replacing regular member Fred Duerkop, who had recused himself. Quorum requirements were satisfied.

Also in attendance: Dave Neumann, Jeff Pytlarz, Prudy Caudill, Tom Chase, Mary Simms, Sally Thomsen, Attorney Steve Tinti

July 9, 2018 meeting minutes submitted for approval (Cheryl recused for not having attended that meeting) Joe motioned to approve, John supported. Minutes were accepted unanimously as presented.

November 27, 2018 minutes submitted for approval, Cheryl moved to accept, Joe supported. Mr. Tinti demurred citing inappropriate use of the word “permission” on page 2 paragraph 2. The word was removed and the motion corrected to accept the minutes as modified. Motion passed unanimously

Agenda submitted for approval, Joe moved to accept as presented Cheryl supported; approved.

Public Comment: Mr. Chase iterated his statements from the November meeting in support of Ms. Thomsens’ variance request.

Julie explained that the public hearing regarding the variance request had been closed at the November 27th meeting, and the purpose of this meeting was to continue discussions that had been tabled in order to research issues that were raised at the earlier meeting.

Resuming deliberations, Julie updated members on research she had conducted, which focused on the standards to be applied when considering dimensional (non-use) variances and the question about roadway ownership under the “Highway by User” statute, MCL 221.20. Cheryl added that she had reviewed archived files in the Township offices to assess criteria utilized by the ZBA in prior decisions related to land division requests.

Standards and guidelines to be used in considering dimensional variances have been outlined in ZBA handbooks prepared by several organizations, including the Michigan Association of Planning and the Michigan Municipal League. This information has previously been provided to ZBA members. Consultation with the Township attorney indicated it was

appropriate to apply these guidelines to the current request and that standards specified in the Watersmeet Zoning Ordinance can be supplemented with established case law. Regarding the questions about road ownership resulting from application “highway by user” statute, as presented by attorney Tinti, Julie discussed the situation with the Township Assessor. He indicated it was not uncommon for properties to be divided by a public or private roadway, and in that situation they typically are treated as a single parcel unless a formal land division request was initiated and approved. The Township Assessor also provided Julie with a circuit court ruling (August 2010) specific to the property in question. That ruling indicated Ms. Thomsen “has one contiguous piece of property with a road running through it”. This does not support statements from the November meeting which indicated the property should be treated as two separate parcels.

Cheryl then summarized the results of her research. She commented that the ZBA has been consistent in denying land division requests that create substandard parcels, allowing them only in rare cases when there are extenuating circumstances beyond the control of the landowner. She further noted Ms. Thomsen’s parcel, as it currently exists, just meets the minimum lot size requirements. The division as proposed would create two substantially nonconforming lots, possibly to the Township’s future detriment if precedent is established that results in additional problems. Cheryl then noted that following her review of prior ZBA decisions and established guidance, she reversed her position from the November 27th meeting.

Discussion continued with other comments on lot sizes, siting, and the facts of the general housing situation. Much of the discussion iterated concerns from the November 27th hearing. Julie again voiced concern about precedent, noting that several of the properties adjacent to Ms. Thomsen’s had similar characteristics, i.e. one parcel with frontage on two lakes, divided by a County road. Citing the history associated with Ms. Thomsen’s request, Julie suggested that if adjacent property owners were to follow the same sequence of approvals and variances, the ZBA could be hard-pressed to deny future requests for a land division variance. She also noted a review of Township parcel maps (available through the Gogebic County website) demonstrated there are properties throughout Township L-1 zoning districts divided by public roads and resulting in “odd-shaped” portions of a parcels, most notably on the lake side of a road. Further, it’s not uncommon for parcels to possess lake frontage on multiple sides of a parcel. Establishing precedent in this case could have broader ramifications throughout the Township.

Attorney Tinti cautioned about a procedural issue where two lawful structures may no longer be allowed and was not sure how this problem came about. The “Guest” house setback conforms, the “Main house” does not, but was given a variance at the time. Dave Neumann and Julie both noted the history associated with the subject property included several variances, including the decision to consider Moon Lake as the primary frontage, thereby allowing the guesthouse to meet the required 125-foot setback from the lake. Tinti countered that was an interpretation of the ordinance. Julie noted that both Moon Lake and Little Moon Lake were greater than 10 acres in size, which means the 125-foot setback would have applied to both frontages, absent a variance from the ZBA. She again questioned whether the situation was self-created, noting the current and historically stated hardship has been the financial difficulty associated with maintaining two dwellings, both of which were constructed by the Ms. Thomsen and her husband.

Sally entered a plea for “humanity” and noted the laws require the ZBA to consider the morality of the situation. It was then questioned whether the attendees should be allowed to interject into the ZBA discusses. Julie noted a tendency for the Township to conduct informal proceedings and suggested we could allow audience input in this case.

Attorney Tinti stated that “practicality” was needed and germane.

Comments were again made about lot sizes, their determination and how the Ordinance was not strong enough to make a difficult decision easier. Cheryl noted several times during the discussion the personal hardship aspects made it difficult to objectively consider the request, but that the ZBA needed to maintain the integrity of the zoning ordinance. Other members concurred.

John believes the hardship aspect needs greater consideration, particularly since the financial issues increased with Ms. Thomsen’s loss of her husband last year.

Attorney Tinti again said the first variance to the lake setback was not a variance depending on which lake was considered to be the starting point of lot usage. Regarding the 2010 circuit court ruling, he indicated it was determined the owner owns “fee” and the County/Township has “base fee”. The assessor does not deduct for road “rights”.

Julie commented and questioned how “practical difficulties” could be applied, and again questioned if the problem was “self-created”. She also stated that a variance runs with the land, not the current owner, which needs to be considered when making any decisions. Ms. Thomsen questioned how the loss of her husband was a “self-created” situation.

John said it looks to him that there are two complete lots: wells, septic systems, driveways, separate power systems, and houses, only the required lot sizes are wrong. The lake frontage requirements for L-1 lots were met or exceeded; only the depth requirement was not met. He furthered questioned the origin of the required 300-foot depth for L-1 parcels. Other members noted that was an issue for the Planning Commission to address.

Both Ms. Thomsen and Attorney Tinti noted there has been a continuing effort to follow the “rules” in applying for the current and historical variance requests. In response, Bill commented on previous and current ordinance violations related to rental of the guesthouse, wondering what other non-conforming conditions may exist. Julie said those conditions were not germane to the request on the table, i.e. a dimensional variance. Although she acknowledged the record suggests there are ongoing violations.

Joe and Cheryl wondered if there is a different approach/variance that might be considered. Cheryl observed use variances seem to allow for greater consideration of “hardship”. However, Joe also noted it was not the responsibility of the ZBA to identify other administrative remedies to avoid compliance

Bill asked to consider the list of questions provided by the ZBA handbook to facilitate a decision, including forms 7.1 or 7.2 from the Michigan Land Use and Planning document, as recommended and provided by the Township Attorney. Cheryl concurred, noting that a checklist should be established based on those questions. Attorney Tinti said they were not appropriate: State law require these forms to be part of the published Township Ordinance to be available for use, and they are not: Further MCL 125.3604, Section 7 requires the “spirit

of the ordinance must be observed and Public Safety secured with substantive justice be done!!

Further discussion of the Zoning Enabling Act and what the ZBA is allowed to do, cannot do and must do per appropriate MCL and Township directives. Julie noted the Township Ordinance uses the same language found in the Zoning Enabling Act with regard to considering variance requests, and that language can be supplemented with case law. Attorney Tinti countered that the ordinance references “undue hardship”, as opposed to “unnecessary hardship”.

Cheryl again asked whether the Board should read through the specified guidelines for considering dimensional variance requests. Attorney Tinti again stated only the standards specified in the ordinance could be applied.

As the discussion was simply revisiting previously stated positions, Chair called the question: Motion by John, supported by Cheryl to grant approval of the **land division request**. No further discussion. Julie requested that each member state the reasons for their vote.

Roll Call:

Cheryl: NO - Resulting lot sizes would be substantially less that required by the ordinance, combined with concerns about setting precedent.

John YES – there is substantial evidence of hardship and he disagrees with the 300-foot depth requirement for L-1 lots.

Joe NO - must adhere to spirit of the Ordinance and approving the request would affect Integrity of the ordinance.

Julie NO – practical difficulty in complying with the ordinance hasn’t been demonstrated.

Bill NO - Ordinance criteria does not support the requested variance, and there are no exemptions to override existing criteria.

Variance Land Division request denied by a vote of 4 – 1.

Julie will provide a letter of denial to Ms. Thomsen, also a copy to Attorney Tinti’s Office. The minutes from this meeting will not be reviewed/approved until the next ZBA meeting, likely at the end of January 2019.

Old Business:

a. scheduled meetings of the ZBA are to be the last Monday of the month, quarterly, starting with January, including April, July, and October. Additional meetings may be scheduled as appropriate.

b. An “Application Form” for requesting a hearing before the ZBA need will be submitted at the January 2019 meeting. Several existing forms have been reviewed and considered. Julie and Cheryl will collaborate on generation of a draft form

c. Also discussed was the need for training of members, possibly with the Planning Commission, primarily to focus on roles and responsibilities of both groups. Julie will coordinate with Township Board and Attorney on said training.

New Business: None

Motion to Adjourn by Cheryl, supported by Joe.

Motion carried, adjourned at 7:30 pm

Respectfully submitted:

H. Bill Neumann ZBA Sec'y

12-14-18