

CLEARWATER TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING AND PUBLIC HEARING
October 14, 2013

APPROVED MINUTES 1/13/14

Meeting called to order by Chairperson Lucy Gerlach at 7:00p.m., followed by the Pledge of Allegiance.

Board members present: Lucy Gerlach, Tina Fields, Jim Adams, Dave Lawicki, Kathy Eldridge

Township officials present: Zoning Administrator Guy Molby, Deputy Clerk Pat Gray; Supervisor Larry Niederstadt.

Also present: residents Joe Dion and Bill Loose; Architect Rick Pansiera, representing Mr. and Mrs. Kurtis Finch; and Teresa O'Hara, ZBA Recording Secretary

Chairperson Gerlach requested board review agenda for meeting and asked for any additions or questions regarding agenda. Tina Fields made a **motion** to accept agenda, Kathy Eldridge seconded the **motion** and the agenda was approved by the board.

Chairperson Gerlach called for a disclosure of actual or potential conflicts of interests. No conflicts declared.

Chairperson Gerlach directed board to review and approve the July 8, 2013 minutes. The board accepted minutes as written.

There was no public comment on items not on the agenda.

Chairperson Gerlach summarized the procedures and rules that the board follows for a public hearing. The present hearing is for a variance request for 9591 Shellway Drive, owned by Mr. and Mrs. Kurtis Finch. It was noted that the structure is non-conforming and that the request is for a variance from the 50 foot waterfront setback required by the zoning ordinance in order to construct a 4 x 16 accessible addition, decking and ramp.

Chairperson Gerlach requested that Rick Pansiera give his presentation for the variance request. Pansiera stated that the Finches purchased the property about a year ago and that Mrs. Finch is wheelchair bound. Pansiera stated that the renovations would provide handicap accessibility and improve the appearance of the home. Pansiera detailed the plan presented in the variance application but also presented an alternative Plan B. Pansiera stated that he had spoken with three neighbors and some had concerns about the amount of deck space in the first plan. Pansiera discussed Plan B (see attachment) in detail and answered questions. Gerlach asked Zoning Administrator Guy Molby for his summary/analysis of the variance request. Molby stated his approval of Plan B. As

there were no further questions, Gerlach closed the public hearing and began board deliberations.

Gerlach stated that the board would consider findings of fact for each of the five standards (ZBA 26.11), and vote as to whether or not the appeal met each standard. Gerlach read the standards and the board discussed in detail.

Standard A: The property is subject to exceptional or extraordinary circumstances or conditions that do not apply generally to other properties in the same zoning district (e.g. unique dimensional, topographical, and/or structural conditions) thus presenting the possibility of a practical difficulty for this particular property.

Board vote for Standard A: 5, yes; 0, no. Standard is met.

Standard B: The requested variance is necessary to alleviate a situation which qualifies as a practical difficulty; i.e., without the variance the owner is deprived of a minimum of practical legal use of his/her property such as is possessed by residents of other properties in the same zoning district. (The possibility of increased financial return is of itself not sufficient to warrant a variance.)

Board vote for Standard B: 5, yes; 0, no. Standard is met.

Standard C: The requested variance is the minimum variance necessary to reasonably mitigate the practical difficulty.

The board further reviewed Plan B. Molby stated that by adding the deck, it may save Mrs. Finch's life; in case of fire she could immediately leave the house if in the bedroom. Gerlach felt the standard had not been met; eliminating the decking in front of the bedroom would still allow for two accessible exits, which would be the minimum necessary to provide access.

Board for vote Standard C: 4, yes; 1, no. Standard is met.

Standard D: The practical difficulty resulting in the need for the requested variance was not created by any action of the current property owner.

Board vote for Standard D: 5, yes; 0, no. Standard is met.

Standard E: The requested variance will not be detrimental to adjacent property and the surrounding neighborhood.

Board vote for Standard E: 5, yes; 0, no. Standard is met.

Chairperson Gerlach stated that all standards having been met by majority vote, the variance for Plan B is approved. Gerlach will complete and sign the decision form and see that Mr. Pansiera receives a copy.

OLD BUSINESS:

Gerlach directed board to address the proposed re-wording of 26.12. The board discussed and then voted. Tina Fields made a **motion**, Dave Lawicki seconded the **motion** and the board approved.

Re-wording Section 26.12 (including 20.13) of the Clearwater Township Zoning Ordinance:

All appeals over which the ZBA has jurisdiction shall be filed in writing at the township office at least thirty days prior to the appeal hearing date. An appeal can be heard at either: 1) a regularly scheduled ZBA meeting; or 2) a specially-scheduled meeting pre-arranged among the applicant, the ZBA chair and the zoning administrator. The fee shall be determined by the Township Board.

Any appeal from an administrative decision must be made within thirty days from the date of the decision constituting the basis for the appeal. Upon hearing the appeal, the ZBA may affirm or modify the ruling, decision or determination, or in lieu thereof make such other or additional determination as it shall deem proper under the circumstances.

The ZBA shall return its decision in writing within thirty days after a request or appeal has been heard, unless additional time is agreed upon by all parties concerned.

NEW BUSINESS:

Gerlach asked the board to discuss procedures regarding a variance request. Gerlach asked if it should be written into the by-laws that the board could question applicants. Molby stated that the “purpose of the ZBA is to question.” Consensus was that adding such wording is not necessary.

Gerlach led the discussion on who should complete the decision form and how long (days) for producing it. From 5 business days to 30 days was discussed. Molby will ask the township attorney, Gerlach will check the MZEA, and a decision will be made according to what is learned. In the meantime, Gerlach will write up the Finch decision within five business days.

No Public Comment.

The next meeting of the ZBA will be Monday, January 13, 2014.

The meeting was adjourned at 8:18p.m.

Respectfully submitted,

Teresa O’Hara, ZBA Recording Secretary

ATTACHMENT: Plan B for the Finch residence