

Zoning Board of Appeals  
Regular Meeting  
July 13, 2015

Approved 1-11-2016

Chairperson, Lucy Gerlach, called the meeting to order at 7:04 p.m. with the Pledge of Allegiance.

Roll call of board members present: Dave Lawicki, Mike Gaylord, Pat Hubble, Tina Fields, and Lucy Gerlach. Also present: Guy Molby, Zoning Administrator and Pat Gray, recording secretary. Two guests present were Donald and Sharon Daly.

Minutes from the Special meeting of May 11, 2015 were approved as presented with no objections.

**Declaration of Conflict of Interest:** Lawicki, none; Fields, none; Gaylord, none; Hubble, none; Gerlach, none.

**Public Comments:** None

**Public Hearing:** A variance request from Donald and Sharon Daly for a waterfront setback to build a deck on their home. After Gerlach outlined the procedures to be followed for the hearing, the Dalys explained the reason for their request.

Their new home was built approximately eight years ago, and at that time the waterfront setbacks in Clearwater Township Zoning Ordinance #9 were different than the setbacks in the current ordinance #22 which was adopted in July, 2011. They were delayed in adding a deck to the house at the time they built, but if he had known the rules were going to change he'd have built the deck at the time the house was built. Sharon explained that they just want to be outside more and enjoy views of the river from a deck.

Molby commented that the Daly's had come to him for a Land Use Permit. He visited the property and took measurements and drew a map of distances, etc. He determined that a variance request was necessary based on the latest waterfront setbacks in the ordinance. Molby stated that his measurement was 35' horizontally on a plane from the river to the stakes for the deck. Lawicki was concerned because that was a guesstimate and not done by a surveyor. Felt a more accurate measurement was necessary because our setback is 50'. Daly commented that the slope to the river was 20'.

**Findings of Fact:** The lot is flat and 301' wide by approximately 250' deep to river. River is below a steep vertical drop and considered by four members as a unique topographical condition and thus qualifying as a practical difficulty.

7:35 p.m. Moved by Gaylord and seconded by Lawicki to take a 20 minute break to go to the Daly's home and take measurements again. All in favor. Motion passed. Molby, Hubble, Lawicki, and Gaylord and the Dalys' left the meeting at that point.

7:55 p.m. They returned to the meeting with information that the best measurement they could obtain was a distance of 42' from the river's edge to the stakes for deck.

**Findings of fact continued:** Owner built house eight years ago under prior zoning ordinance which included standards for vertical waterfront setbacks that would allow the deck he now plans. He is being deprived of his legal use by the change in the standards. There are extraordinary circumstances because of the slope to the river. The structure of the house is already in place. With some redesign, the 50' setback could be met.

Each standard was read and a roll call vote taken.

**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.**

Hubble – yes, due to the topographical condition.

Gaylord – yes, because of topographical condition

Lawicki – yes, for same reason

Fields – yes, agrees there is a unique topographical condition which could create a practical difficulty.

Gerlach – no, since there is approximately 301' x 250' of buildable land. Does not feel the property is subject to extraordinary circumstances or conditions.

**This board finds that Standard A has been 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 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).**

Hubble – yes, there is no legitimate reason to deprive them

Lawicki – yes, he would be deprived

Gaylord – yes, because when he built the house he would have been legal

Fields – no, doesn't think he would be deprived of the minimum practical legal use

Gerlach – no, a smaller deck could be built

**This board finds that Standard B has been met.**

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

Gaylord – yes, the board changed rules after the house was built.

Fields – no, has a problem with saying it is the minimum variance necessary.

Hubble – yes, rules were changed

Lawicki – yes, change in the ordinance

Gerlach – no

**This board finds that Standard C has been 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.**

Gaylord – yes, was created by the change in the zoning ordinance

Lawicki – yes, he didn't create the difficulty

Fields – yes, because the law was changed

Hubble – yes, they did not create the situation

Gerlach – yes, the law changed and they did not create that action

**This board finds that Standard D has been met..**

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

Lawicki – yes, it will not be detrimental to any adjacent property

Fields – yes, not detrimental to other properties

Hubble – yes, not detrimental

Gaylord – yes, not detrimental

Gerlach – yes, won't be detrimental

**This board finds that Standard E has been met.**

**The majority voted yes on all standards, therefore this variance is granted. The final decision form will be sent to the Dalys' within 30 days.**

**Old Business:** Fields reported for the Planning Commission that the wording for Article 26 was sent to the county planning and they found no problem. Each piece of the article was reviewed. The proposed amendment will be sent to the township board to act on.

In a previous ZBA meeting, the board requested that the planning commission remove the ZBA from PUD and Special Use considerations. The MTA has recommended that the ZBA does not need to consider those two things because the planning commission and township board will have considered them thoroughly. Fields stated that the ZBA has never been considered in PUD's. However, it was discussed by the planning commission and they have agreed that an individual should be given one more opportunity before having to go to court. Therefore, the planning commission declines to ask the township board to remove that language when a SUP is requested.

Gerlach moved that the Planning Commission recommend to the township board that the Zoning Board of Appeals ZBA voted unanimously to be removed from the ordinance for having to consider an appeal for a Special Use Permit. Seconded by Gaylord. Hubble-yes; Lawicki-yes; Gaylord-yes; Fields-yes; Gerlach-yes. All in favor, motion carried.

**New Business:** Discussion on the fact that Wes Umlor did not stay within the boundaries of the variance that was recently granted to him.

Moved by Lawicki to have the Zoning Administrator follow through with legal proceedings against Umlor to "cease and desist" because he went beyond what was granted by the Zoning Board. Seconded by Fields. All in favor. Motion carried. Gaylord suggested that the Building Inspector be contacted and made aware of the situation.

Moved by Gaylord, seconded by Hubble to adjourn. All in favor.

Meeting adjourned at 8:50 p.m.

Pat Gray, Recording Secretary