

**CLEARWATER TOWNSHIP
ZONING BOARD OF APPEALS
Public Hearing
January 9, 2012**

Draft Minutes

Meeting called to order at 7:00 p.m. by Jim Adams, Chairperson. The Pledge of Allegiance followed.

Board members present: Jim Adams, John Margo, Tina Fields, Lucy Gerlach, Dave Lawicki

Public present: Guy Molby, Zoning Administrator, Larry Niederstadt, Theresa Shurman, Dwight Morin and Pat Gray, recording secretary.

Moved by Fields, and seconded by Gerlach to approve the agenda as presented. Motion passed.

The minutes from the regular meeting of October 10, 2011 were approved as presented.

MATTER TO BE ADDRESSED:

Variance Request #1 of 2012: Theresa Schurman has requested a 5' side yard setback to allow a storage shed on her property. Parcel #40-004-228-018-00. Property Description: Lots 18 & 34, Blk 4, Crystal Beach-Sec.5 T28N-R8W. Address; 6932 Crystal Beach Rd., Rapid City, MI.

Each board member declared "no conflict of interests".

Gray reported that 21 notices had been mailed to residents within 300' of the Shurman property. Eight replies were received. Six replies were in favor of the petition request. One was not in favor of the petition request, and one had no preference.

Adams referenced the criteria for reviewing dimensional (non-use) variances in section 26.11 of the Clearwater Township Zoning Ordinance.

Theresa Schurman presented her appeal for a variance. She explained the need for storage and the fact that her lot is only 50' wide. She preferred to erect the size she put up, which is 12'x14', versus putting up several smaller buildings. So there would good access to the house, it was placed close to the property line. It matches the other buildings on the property. The septic lies in front of the shed and she needed room for access to that and the well which is on the west side of the house. If she had to move the building over to allow 10', it would be an encumbrance for that and emergency vehicles. In addition she needs enough room for handicapped individuals and vehicles. The setback from the road is o.k. The neighbor nearest to the shed is in total agreement with the request and she has also talked to other neighbors who are in agreement. She has done substantial improvements and added value to the property and does not feel the shed takes away from that.

Adams questioned whether she would be able to get a car in and out if the shed were moved over, and she stated that it would be really tight, and there would be no turn around radial. She would also have to take out some trees.

Gerlach stated it was her understanding that a Land Use Permit had not been obtained prior to construction of the shed. Schurman replied that it was a misunderstanding. When she called to

inquire about that, it was her understanding if it was a portable shed and not fixed to the property and it was 12'x14' there was not a 10' setback. The requirements she received did not reference portable sheds, so she looked at State law which said that if it was 12'x14' a 10' setback was not needed if it was portable. Her builder had also looked into it. It wasn't until after the shed was built that she found out that Clearwater Township had additional regulations. She stated that she has paid thousands of dollars for permits, had a licensed contractor, and everything done on the house has been to the letter of the law. She stated she would not in any way violate anything, which is why she has applied for the variance. She apologized for misunderstanding the regulations.

Adams stated that he had walked the property twice and concurred that if the shed was placed at the 10' setback there would not be accessibility for handicapped individuals. Fire Department and emergency vehicles have access by parking in front of the garage. He felt that there would have been no problem if a smaller shed had been built.

Schurman replied that she needed the storage since the house has no basement or attic and a small garage. It is the only home she has and she has simplified her life and downsized, but needs the larger shed. She feels she has done a good job of upgrading the property for the neighborhood.

Lawicki asked why she didn't add on to the garage and make it a little longer. Schurman replied that it would have cut down on the length of the driveway and would have been a substantial amount more money. Also there would have been additional permits. She never looked into adding onto the garage from the standpoint of setbacks. She also didn't think it would look very good.

Lawicki commented on the fact that the builder should have been aware that a permit was needed. Schurman explained that the builder is from Alpena and because the shed was portable, he did not think a permit was needed. Lawicki replied that if he was a professional builder, he should have checked on the ordinance before building. Schurman again apologized for the misunderstanding.

Gerlach confirmed that the shed is now 5' from the property line including the overhang, and would need to be moved 5' to the west. This would leave 28' of usable space for the driveway, etc. Adams questioned how difficult it would be to bring the shed in line with the house which is 8' from the property line. Schurman replied that it would be a significant expense because it would take a backhoe to move it. Fields confirmed that it is theoretically movable, but a fairly large structure. The shed sits on 4'x4 footings.

The public hearing was closed. The board began review of the standards.

The following standards apply to a Dimensional (Non-Use) Variance:

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.

B. The requested variance is necessary for the preservation and enjoyment of a substantial property right 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).

C. The requested variance will not be detrimental to adjacent property and the surrounding neighborhood.

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

E. The requested variance is the minimum variance necessary to reasonably mitigate the practical difficulty.

Board Deliberations followed:

Standard A (as shown above) was read aloud by Adams. **Lawicki** felt that the narrowness of the lot would be an extraordinary circumstance, and agreed the standard has been met. **Gerlach** did not find a 50' lot to be an extraordinary circumstance since there are quite a number of 50' lots in the area. When you have a smaller lot you can't do the things you could do on a larger lot, and that is a reality. She did not agree that the standard was met. **Fields** feels that the narrow lots of that portion of the township are visited with an exceptional dimensional constraint that the rest of the township does not have. She feels that the standard has been met. A response from Gerlach noted that recently the Planning Commission had reviewed the entire zoning ordinance and made many changes that were recommended to the Township Board. In the course of that review they did not choose to change the setback requirements. Therefore she feels that the Planning Commission was telling us that we need to observe the setbacks. She does not feel that a storage shed is such an extraordinary need that we should break the law. Fields thanked Gerlach for bringing that to her attention and she will take that back to the Planning Commission. **Margo** feels the standard has been met and **Adams** felt the standard had been met due to the narrow lot. He feels this question will continue to come up with the next generation of property owners who will be updating all the time and trying to push the envelope. We need to address this at the Planning Commission.

Four board members agreed this standard has been met. One board member did not think the standard had been met. By majority, the board finds that Standard A has been met.

Standard B (as shown above) was read aloud by Adams. **Lawicki** does not agree that the variance meets this standard and is necessary for the preservation and enjoyment of the property. **Gerlach** does not believe it meets this standard. There are two possibilities here, either move it over or build a smaller shed. These two possibilities would still give the property owner all of the rights that everyone else has. **Margo** feels the standard has been met. **Fields** addressed the question of substantial property right, and feels that a property owner should have space for normal storage. However, as this piece of property is built, it is lacking space. Even though it would be difficult to move the shed or build a smaller one, she does not feel the variance is necessary for the enjoyment of the property. Therefore, she does not believe this standard has been met. **Adams** stated that since there is no storage in the general area, he feels the standard has been met.

Two board members agreed this standard has been met. Three board members did not think this standard was met. By majority, the board finds that Standard B has not been met.

Standard C (as shown above) was read aloud by Adams. **Lawicki** feels the variance would be detrimental to the neighborhood because other property owners along Crystal Beach Rd. would want to do the same. He feels this standard has not been met. **Gerlach** feels it would not be detrimental as far as appearances go, but looking at long range possibilities, it could have detrimental effects. She does not feel the standard has been met. **Fields** doesn't think the variance would be detrimental to the adjacent property or surrounding neighborhood, so feels it does meet this standard. **Margo** agrees it does meet this standard. **Adams** agrees it meets the standard.

Three board members agreed this standard has been met. Two board members did not think this standard has been met. By majority, the board finds that Standard C has been met.

Standard D (as shown above) was read aloud by Adams. **Lawicki** feels that the practical difficulty resulting in the need for a variance was created by the property owner because she did not get the necessary permit. The standard has not been met. **Gerlach** also feels the difficulty was created by the property owner. The standard has not been met. **Fields** feels the underlying practical difficulty is the narrowness of the lot, but feels that if Guy Molby had been consulted he would have informed the land owner of the issues and it could have been taken care of before she had invested money on it. She believes this standard has not been met. **Margo** agreed that the difficulty was created by the property owner and this standard has not been met. **Adams** agreed also that the standard is not met.

Five board members agreed that Standard D has not been met.

Standard E (as shown above) was read aloud by Adams. **Lawicki** feels it doesn't meet the standard. **Gerlach** stated that since the shed can be moved, the requested variance does not meet the minimum variance necessary. This standard has not been met. **Fields** expressed serious regret at the inconvenience and additional expense to the applicant, but agrees this is not the minimum variance necessary since we have established it could be a slightly smaller shed or in a slightly different position. If it were lined up at the same distance from the property line as the house, there probably wouldn't be much discussion. This standard has not been met. **Margo** agrees the standard has not been met. **Adams** feels the shed should be moved over three feet to be in line with the house itself. This would still require a variance request. He feels this standard has not been met.

Five board members agreed that Standard E has not been met.

Because all standards were not met, the variance is denied.

Schurman spoke to the board regarding the comment about "breaking the law" stating that since she is an attorney she takes offense at that because she doesn't believe a variance hearing is breaking the law. She believes there are zoning rules and people apply for variances for different reasons. She feels the variance request meets **Standard A** because of the size of the lot. She believes it is a substantial right for her to be able to use her property. She could have built up two stories, but that would have impeded the view of other people. There were several things she could have done and stayed within the confines of the zoning regulations, but she chose to keep it as small on the property as possible. The shed is positioned so that it doesn't block anyone's view of the lake.

Schurman believes the variance should be granted. She does not agree with the interpretation of some of the language of the standards, but she is looking at it from a legal aspect and how the standards should be interpreted. There were existing buildings that were already there on that narrow lot so she does feel that **Standard D** is met because of the practical difficulty in being able to put a storage shed on the property because of the existing buildings. She believes that if she doesn't have the shed that size there will things sitting outside and that will not be aesthetically pleasing. That is what happens on the narrow lots. If she has to have a smaller shed, that is what will happen because she has a substantial amount of property in it. Regarding **Standard E** she believes the requested variance gives the minimum variance necessary to mitigate the practical difficulty. She doesn't believe moving it over a couple of feet will make any difference in how it looks on any blockage or access to my neighbors. All the generations that have lived to the east of the property are in complete agreement and the gentleman who lives on the other side is in complete agreement with the shed. She has talked with all of the neighbors around her and they are fine with it. She thought she was in the right when building it and she has explained that. She apologized again, and stated she certainly didn't go against any zoning ordinance on purpose. She believes the variance request meets all of the standards. She was given a copy of the standards prior to the meeting. She asked the board to grant the variance request. She doesn't want to go to the expense of moving or

rebuilding the shed. She has already put a substantial amount of money into the property. She is a widow and relies on her own resources. She apologized again for the misunderstanding in not getting a permit.

Fields replied that she feels sympathetic to Schuman's situation, but feels bound by the standards. So even though she is sympathetic, there are some standards that she did not feel were met.

Margo questioned Schurman as to whether she believed she met **Standard D**. She replied that she believes the practical difficulty referred to in that standard would be the size of the lot, and the existing buildings that were on the lot. She doesn't think the reference to practical difficulty is referring to the fact that the shed was placed too close to the property line. She is looking at the interpretation of practical difficulty differently than the board members. Margo replied that he feels the practical difficulty resulted from the fact that she did not apply for a permit. Schurman still feels if she had placed all the buildings on the property, then she would have caused the practical difficulty, but since they were already there she had no other place for the shed.

Fields replied that she understood what Schurman was saying and saw the possibility to interpret practical difficulty that way. Schurman continued that if you look at **Standard E**, she believes she has met that because by leaving the shed where it is it allows her to use her property and to have ingress and egress especially for handicapped individuals. That is the minimum amount she is asking for, just to leave the shed 5' from the property line, and not have to move it over five more feet...

Gerlach commented that she hoped Schurman had not misunderstood, but the board had already voted and denied the request. Schurman replied that she did misunderstand that. Gerlach explained that if she did not meet every one of the standards, the variance is denied. Schurman stated that she did not agree with the interpretation of some of the standards. Fields explained that if all standards are not met, the petition is denied. Schurman questioned the appeals process, and stated she would be filing an appeal. She would also like an interpretation of the standards. Gerlach explained that the appeal would be with the court. Fields read the definition of "Practical Difficulty" as it appears in the Zoning Ordinance. Fields concurs that not every term used is identified in the ordinance definitions, and when that is the case we resort to dictionary definitions.

Schurman stated that she assumed she did not have to move the shed until after the appeal process. Molby confirmed this.

New Business: Meeting dates were set for the coming year as follows: April 9, 2012, July 9, 2012, October 8, 2012, and January 14, 2013.

Selection of Officers: Lucy Gerlach volunteered to be chairperson for the next year. John Margo volunteered to be Vice Chairperson, and Dave Lawicki volunteered to be secretary.

Discussion followed regarding the interpretation of the standards. Molby will bring the recently revised standards being used by Helena Township to our next meeting for review.

Meeting adjourned at 8:17 p.m.

Pat Gray, Recording Secretary
Lucy Gerlach, Zoning Board of Appeals Secretary