

**CLEARWATER TOWNSHIP
ZONING BOARD OF APPEALS
Public Hearing
April 11, 2011**

Approved July 11, 2011

Meeting called to order at 7:03 p.m. by Jim Adams, Chairperson. The Pledge of Allegiance followed.

Members Present: Jim Adams, John Margo and Tina Fields.

Absent: Lucy Gerlach

Adams noted there is a quorum present, and it will take a unanimous vote to approve or deny a variance.

Public Present: Paul Fisher, John Graham, Mark Malott, Bruce Belanger, Tim Lund, Dave Lawicki, and Pat Gray, recording secretary.

The Agenda was approved as presented.

Minutes from the meeting of January 10, 2011 were accepted as presented.

Adams explained the procedures for the meeting, explaining that there are stricter standards to be followed under Article 26 of the Zoning Ordinance which were adopted by the township in June, 2010. Each applicant has been given a copy of these new standards.

Board members agreed there were no "conflict of interests".

VARIANCE REQUEST #1 OF 2011: Mark Malott has requested a 5' side yard setback to allow for an addition to the front of his existing dwelling and a canopy to an existing garage.

Malott presented his appeal, stating that he purchased his property in 1995. It was a 700 sq.ft. cottage which needed a lot of work. Approximately 10 years ago he requested and received a 5' variance on the east side of his property to construct a garage. He purchased an additional piece of property behind the residence last year for a new septic system. The original dwelling was built in 1955 and was 5' from the property line on the west side. He wants to build a 15' x 24' addition on the front of the dwelling which will add an additional 336 sq. ft. to accommodate his growing family. An existing porch on the front of dwelling will be moved, so the actual wall on the west side will extend 15' from where the porch is removed. The structure will meet the front setback. His original application requested a 17' x 21' canopy on the front of the garage. He has changed that plan and will keep the canopy at a 15' width which will be in line with the existing garage. Malott shared copies of his latest blueprints with the board members.

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

1. 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.

2. 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).

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

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

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

Malott addressed the standards as follows:

1. The dwelling was built in 1955 and the setback on the west property line was created when it was built.

2. His family is growing and the addition will allow more living space especially in the kitchen. The canopy will allow a covered place to be outside. It is in line with neighboring properties, and the property owners on either side do not have any objections.

3. He believes the proposed additions will greatly enhance the beauty and curb appeal of his property and the surrounding properties.

4. The need for the variance was created when the dwelling and property lines were set.

5. He answered "Yes". The proposed variance will stay in line with the 5' setbacks that already exist on both the east and west property lines.

Gray reported 23 notices were sent to property owners within 300' of Malott's property. 8 responses were received, 5 were in favor of the proposed petition and 3 were not in favor of the proposed petition. Those not in favor were not immediate neighbors.

The Zoning Administrator had no additional comments. He felt that all issues had been covered by the applicant. There were no public comments.

The public hearing on this petition was closed at 7:25 p.m. and the board began deliberations.

Correspondence received from board member, Gerlach, who could not be present, was read. She gave her opinion on all five standards as follows:

Standard 1 is not met: the lot is neither exceptional nor extraordinary; there are many 50 ft. wide lots in the area.

Standard 2 is not met: there is already a home and garage on the property, so no substantial right is being denied. I do not believe that a canopy is a substantial property right.

Standard 3 is not met: the two existing buildings are already just 5 feet from south, east and west property lines, and the garage is less than eight feet from the house (10 feet required). The proposed plan would add another 15 feet of structure that is 5 feet too close to the west property line and add 21 feet of structure that is only 3 feet from the east property line. This, in the long term, is detrimental to the properties on either side.

Standard 4: I do not see a practical difficulty. Repairs can be made without need of a variance; if more space is desired, the addition can be offset 5 feet on the west side, without need of a variance. From the drawing submitted, it appears the owner could construct a 10 foot wide canopy, if desired, without need of a variance.

Standard 5: As stated above, I do not see a practical difficulty.

Board deliberations continued.

Standard #1 (as shown above) was read aloud by Fields. She responded to the standard, stating that because this is a very small property, and when the original dwelling was built, the rules that are in place now did not exist. The size of the property does give it some unique dimensional difficulties which are not experienced generally throughout the rest of the R-1 area. She feels that there are some exceptional and extraordinary circumstances. They may be common in his neighborhood, but not in the entire R-1 district. Therefore, she feels this standard has been met.

Margo agreed with Fields findings. Adams also agreed .

The board finds that standard #1 is met

Standard #2 (as shown above) was read aloud by Fields. Margo responded that he agrees it is necessary for the applicant to build the dwelling a little larger for his family and feels the standard has been met. Adams agrees with this. Fields noted that the dwelling itself does not meet the minimum standard of 800 sq. ft. living space. She feels the applicant is asking for something quite reasonable. She feels the standard is met because it's not just his neighbors he needs to be compared to, but the rest of the zoning district. If he cannot have a little extra room, then he does not have the same enjoyment of his property as other people in the same district. Granting his petition will bring the home into compliance with the minimum dwelling size, but there is nothing he can do to make his setbacks correct. The dwelling size, with the addition, will be 1036 sq.ft.

The board finds that standard #2 is met

Standard #3 (as shown above) was read aloud by Fields. After reviewing the responses from the mailing, the immediate neighbors have not shown any objection to the petition. The neighbors on the west side are within their 10' setback. The Zoning Administrator confirmed there is a 10' space between dwellings for emergency vehicles. Adams feels a lot of the properties along the road have variances or are grandfathered in. He thinks the standard has been met and the variance will not be detrimental to adjacent properties. Margo feels the standard has been met and the variance will not be detrimental to the surrounding neighborhood. Fields agrees the standard has been met and doesn't think the variance will pose any detriment to his neighbors.

The board finds that standard #3 is met.

Standard #4 (as shown above) was read aloud by Fields. In Fields opinion, the applicant bought the property with the practical difficulty. He did not create it since it was there when he bought it. She feels the standard has been met. Margo agrees. Adams agrees.

The board finds that standard #4 is met.

Standard #5 (as shown above) was read aloud by Fields. Margo agreed this standard was met and Adams agreed the standard was met. Fields stated that since the applicant has reduced the canopy encroachment that was originally planned in order to make it the minimum possible, this standard has been met.

The board finds that standard #5 is met.

All board members agreed that the standards have been met and the variance is granted.

A decision letter will be sent to the applicant, and a Land Use Permit can be issued in 15 days.

VARIANCE REQUEST #2 OF 2011. John Graham has requested a variance for a 5' side yard setback to allow for construction of a garage.

Graham explained that he has a 50' lot. The existing new house on the lot is 30' wide and in compliance. The septic field on the east side of the property has taken up a lot of room. Fields questioned if there was any other place on the property where a garage could be set, and Graham stated there is no other place for a garage. A new septic tank and drain field are at the back of the house, and a new well is in the front of the house according to health department specifications. Paul Fisher, builder for Graham explained that the health department required the drain field be kept 10' from the property line. A variance request to the road commission to make the drain field longer and narrower was denied. He stated the drain field is approximately 25' by 60'. A retaining wall will be built around it, and the garage will be built right next to the retaining wall. The drain field couldn't go on the west side of property, as it would be too close to the neighbor's well.

Correspondence received from board member, Gerlach, who could not be present was read giving her opinion on all five standards as follows:

1. Standard 1 is not met. The lot is neither exceptional nor extraordinary; there are many 50 ft. wide lots in the area, some not as deep as this one.
2. Standard 2 is probably not met, since there are others who also cannot fit garages on their lots because of lack of space.
3. The garage may not be detrimental to the neighborhood, but it may be detrimental to the property immediately to the west.
4. Standard 4 is not met: owner built a new house which required a larger septic system.
5. Standard 5 is not met: owner could build a shorter garage (but that would not compensate for the other standards not met).

Gray reported that 14 notices were sent to property owners within 300 ft. 7 responses were received. Six were in favor of the petition, and one had no preference. Graham stated that the neighbor to the immediate west was not opposed to the variance, and the neighbor to the east was in favor of the petition.

There were no additional comments from the public. The public hearing was closed and board deliberations began.

Standard #1 (as shown above) and read aloud by Fields. It is the opinion of Fields that the same issues apply to this property as the previous request in terms of dimensional and structural conditions. The 50' lots were put together almost a century ago, long before the township zoning was put into effect. Anyone owning one of these lots is going to face dimensional issues that are not faced by most of the rest of our community. She believes it is subject to extraordinary circumstances and standard 1 has been met. Adams agrees, for the same reasons, and Margo agrees for the same reasons.

The board finds that standard #1 is met.

Standard #2 (as shown above) and read aloud by Fields. Applicant was asked what substantial property right was at risk. His replied "If he couldn't put a garage on the property it would jeopardize the life of his vehicle. It would have an adverse effect on his ability to store personal belongings. Having a garage would offer a certain degree of protection for his personal property. Margo agrees that the applicant has met this standard. Adams also agrees. Fields also agrees.

The board finds that standard #2 is met.

Standard #3 (as shown above) and read aloud by Fields. Neighbors on both sides have indicated they have no objection to the variance. In Fields opinion, judging from the facts presented by the builder, this standard has been met. Adams agrees and Margo agrees standard has been met.

The board finds that standard #3 is met.

Standard #4 (as shown above) and read aloud by Fields. The new drain field, which takes up most of the back yard, was imposed by the department of health, and a 10 ft. setback from the east property line was required. Fields questioned if the neighbors on the west are far enough from the property line to create a 10 ft. space between the proposed new garage and any building on their property. Fisher answered "yes". Zoning Administrator Molby concurs. Fields finds this practical difficulty was not created by the action of the property owner and was imposed upon him by the government. Therefore, this standard has been met. Margo agrees for the same reasons. Adams agrees for the same reasons.

The board finds that standard #4 is met.

Standard #5 (as shown above) and read aloud by Fields. Margo agrees this is the minimum variance necessary. Fields also finds this standard has been met because the applicant was handed this problem. Adams agrees for the same reasons.

The board finds that standard #5 is met.

All board members agreed that the standards have been met and the variance is granted.

A decision letter will be sent to the applicant, and a Land Use Permit can be issued in 15 days.

Public hearing closed.

New Business: A revision of the NOTICE OF APPEAL application was supplied by Gerlach and incorporates the new standards in Article 26 of the Zoning Ordinance. The changes were discussed by the board. There is a minor change to the wording under "D. Other Authorized Review."

It was moved by Fields and seconded by Margo that the suggested changes to the NOTICE OF APPEAL application be recommended to the Clearwater Township Board for approval. Motion passed.

The PROCEDURES FOR REVIEWING DIMENSIONAL (NON-USE) VARIANCES was discussed. It was moved by Fields and seconded by Margo to reverse the order of items #8 and #9. Motion passed.

Moved by Fields and seconded by Margo to adjourn at 8:50 p.m.

Respectfully submitted,

Pat Gray, Recording Secretary