

CLEARWATER TOWNSHIP ZONING BOARD OF APPEALS  
REGULAR MEETING  
January 14, 2013

DRAFT MINUTES – approved 4-8-13

Meeting (both a Regular Meeting and a continuation of the December 10, 2012 hearing on an appeal for variances for a shed by Theresa Schurman) called to order by Chairperson Lucy Gerlach at 7:01p.m., followed by the Pledge of Allegiance.

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

Also present: Pat Gray, Township Deputy Clerk; Bryan Graham, Township Attorney; Larry Niederstadt, Township Supervisor, Guy Molby, Zoning Administrator; Theresa Schurman, Resident; Dwight Morin, Resident; Teresa O’Hara, Recording Secretary

Chairperson Gerlach added to the agenda the Proposed General Findings of Fact. Tina Fields moved to add to agenda, John Margo seconded and the agenda was approved.

Chairperson Gerlach asked for a disclosure of actual or potential conflicts of interest. There was no conflict of interest.

CONTINUATION OF THE SCHURMAN VARIANCE APPEAL:

Gerlach directed board to review the Proposed General Findings of Fact submitted by Bryan Graham. John Margo made a motion to accept the proposed findings of fact as amended during discussion, and Dave Lawicki seconded the motion. The board approved, with the following changes:

3. add “shed”
4. delete “was previously” and change to “the applicant”
13. add “direction” after north-south

Proposed Findings of Fact attached hereto and incorporated herein by reference.

Township Attorney Graham stated that, as agreed at the December 10, 2012 meeting, the drain field was located and Zoning Administrator Molby added the additional information to the diagram of the property (Exhibit 9).

Gerlach directed the board to consider each of the five standards (26.11) for the side setback and road right of way setback separately.

After lengthy discussion, the board DENIED the side setback request for variance.

**Standard A: The vote was 4-1. Standard A has been met citing the following findings of fact:**

1. The board finds that the storage of personal items is a land use enjoyed on other residential properties within the R-1 zoning district. (Exhibit 7)
2. The Board finds that because of the high water table on the waterfront property, the Applicant's home cannot have a basement. (Exhibit 7)
3. The Board finds that the property has a narrow width of 50 feet that generally does not apply to other property within the R-1 district (Exhibit 31)
4. The Board did not agree with this finding.
5. The Board finds that the narrow width of the lot limits the location where the shed can be placed. (Exhibit 7)
6. The Board, therefore, finds that the property is subject to exceptional or extraordinary circumstances or conditions that do not apply generally to other properties in the R-1 district.

**Standard B: The vote was 2-3. Standard B has not been met citing the following findings of fact:**

1. The board finds that storage of personal items is a land use enjoyed on other residential properties within the R-1 zoning district. (Exhibit 7)
2. The Board, however, finds that there is no substantial property right to any minimum level of storage for those personal items.
3. The Board finds that the Applicant can move the shed to the west or construct a smaller shed for the storage of person items without the need for the requested variance.
4. The Board, therefore, finds that the requested variance is not necessary for the preservation and enjoyment of a substantial property right such as is possessed by residents of other properties in the R-1 district.

**Standard C: The vote was 5-0. Standard C has been met citing the following findings of fact:**

1. The Board finds that the shed is well built and is placed to not visibly crowd the property. (Exhibit 7)
2. The Board finds that the development of the property east of the Applicant's property is more than 10 feet from the shared boundary line; therefore, the distance between the applicant's shed with the requested variance and the development on the adjacent property will be sufficiently separated so as that shed will not be detrimental to that development. (Exhibit 7)
3. The Board finds that the placement of the shed is in a location to not impede ingress or egress to Applicant's property. (Exhibit 7)
4. The Board finds that the requested variance, which would allow the shed to be located 5 feet from the east boundary line of the lot, will allow during peak season all parking to be on the property and not on the public road. (Exhibit 7)

**Standard D: The vote was 4-1. Standard D has been met citing the following findings of fact:**

1. The Board finds that the Applicant did not create the 50 feet wide lot. (Exhibit 7)
2. The Board finds that the other development on the property (septic tank, drain field, and garage), which was not performed by the Applicant, contribute to the need for the requested variance. (Exhibit 7)
3. The Board, therefore, finds that the practical difficulty resulting in the need for the requested variance was not created by any action of the Applicant.

**Standard E: The vote was 1-4. Standard E has not been met citing the following findings of fact.**

1. The Board finds that because there is no substantial property right to any minimum level of storage for personal items, the Applicant could move the shed to the west or construct a smaller shed for the storage of personal items either without a variance at all or with a smaller variance.
2. The Board, therefore, finds that the requested variance is not the minimum variance necessary to reasonably mitigate the practical difficulty.

Chairperson Gerlach stated that two of the five standards have not been met, therefore the side setback request for variance is denied. A motion by Gerlach, seconded by Margo, that based on the findings of fact, the Applicant's request for a 5 feet variance from the side setback requirement along the east boundary line of the subject property for the placement of a 12 feet by 14 feet storage shed is hereby DENIED.

After further discussion, the board GRANTED the road setback request for variance.

**Standard A: The vote was 4-1. Standard A has been met citing the following findings of fact:**

1. The Board finds that the Appellant's septic field is located 2 feet north of the existing shed. (Exhibit 31)
2. The Board finds that the septic field cannot be relocated. (Exhibit 10)
3. The Board, therefore, finds that the shed cannot be moved to the north. (Exhibit 10 and Exhibit 31)

**Standard B: The vote was 5-0. Standard B has been met citing the following findings of fact:**

1. The Board finds that storage of personal items is a land use enjoyed on other residential properties within the R-1 zoning district. (Exhibit 7)
2. The Board finds that the property should be accessible to those with a handicap and accessible to emergency and maintenance vehicles. (Exhibit 7)
3. The Board finds that the requested variance is needed based on the findings under Standard A above, which are incorporated herein by reference. (Exhibit 7)

4. The Board, therefore, finds that 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 R-1 district.

**Standard C: The vote was 5-0. Standard C has been met citing the following findings of fact:**

1. The Board finds that the shed is well built and is placed to not visibly crowd the property. (Exhibit 7)
2. The Board finds that the location of the shed 18 feet from the road right-of-way is a sufficient distance so as that shed will not be detrimental to the use of the road by public authorities and members of the general public. (Exhibit 7)
3. The Board finds that the placement of the shed is in a location to preserve the view of the lake and not to impede ingress or egress to Applicant's property. (Exhibit 7)
4. The Board, therefore, finds that the requested variance will not be detrimental to adjacent property and the surrounding neighborhood.

**Standard D: The vote was 5-0. Standard D has been met citing the following findings of fact:**

1. The Board finds that the Applicant did not create the subject lot. (Exhibit 7)
2. The Board finds that the other development of the property (septic tank, drain field, and garage), which was not performed by the Applicant, contribute to the need for the requested variance. (Exhibit 7)
3. The Board, therefore, finds that the practical difficulty resulting in the need for the requested variance was not created by any action of the Applicant.

**Standard E: The vote was 5-0. Standard E has been met citing the following findings of fact:**

1. The Board finds that the requested 12 feet variance will not cause any hardship to surrounding properties or to the use of the road. (Exhibit 7)
2. The Board finds that the requested 12 feet variance will allow the Applicant to utilize the property as desired. (Exhibit 7)
3. The Board, therefore, finds that the requested variance is the minimum variance necessary to reasonably mitigate the practical difficulty.

Chairperson Gerlach stated that all standards have been met. A motion by Gerlach, seconded by Fields, that based on the findings of fact, the Applicant's request for a 12 feet variance from the road setback requirement for the placement of a 12 feet by 14 feet storage shed is hereby GRANTED.

**OLD BUSINESS**

Chairperson Gerlach asked Fields for an update on proposed changes to the ZBA section of the township zoning ordinance. Fields stated that is in the hands of the

township board. Supervisor Niederstadt stated that it will be on their agenda for Wednesday, January 16, 2013 meeting. Fields will make copies of the changes available to each ZBA member.

## NEW BUSINESS

Chairperson Gerlach directed the board to the annual election of officers, suggesting possible two-year terms. The board decided to maintain the yearly election. Fields made a motion to nominate Lucy Gerlach as Chairperson, Margo seconded motion and board approved unanimously. Margo made a motion to nominate Tina Fields as Vice-chair, Gerlach seconded motion and board approved unanimously. Gerlach made a motion to nominate Dave Lawicki as Secretary, Margo seconded motion and board approved unanimously.

Gerlach then requested that the board set up the 2013-14 schedule of meetings.

Monday, April 8, 2013

Monday, July 8, 2013

Monday, October 14, 2013

Monday, January 13, 2014

Chairperson presented board members with additional proposed changes to the ZBA ordinance and requested they review and will discuss at next meeting.

### Public Comment

Supervisor Larry Niederstadt praised the board for their work stating, "Thank you for all the time you put in."

Fields made a motion to adjourn meeting, Gerlach seconded and the board approved. The meeting was adjourned at 9:04p.m.

Respectfully submitted,

Teresa O'Hara, Recording Secretary

ATTACHMENT: Revised General Findings of Fact

The next regular meeting will be held on Monday, April 8, 2013 at 7:00p.m.