

Milton Township  
Zoning Board of Appeals  
Meeting Minutes  
August 14, 2014

Members present: Anderson, Jankowski, Burdo, Atkinson, Kopkau, and Gray

Also present: Weinzapfel and eight audience members

Members absent: Kingon, excused

Anderson called the meeting to order at 7:00 pm and the Pledge was recited

Approval of meeting minutes dated 4/10/14

Correct the spelling of Kopkau

Motion to approve the minutes as corrected Jankowski. Seconded by Kopkau. Motion carried.

Approval of Agenda

Motion to approve the agenda as presented by Kopkau. Seconded by Jankowski. Motion carried.

Variance request for Alan and Kimberly Weder: Property address: 10253 SW Torch Lake Drive, Rapid City, MI 49676. Parcel #05-006-028-00. The Weder's are requesting an 10' 11" front yard (lake side ) setback variance for construction of a new home.

Andre Poineau is here as the representative of the Weder's.

Weinzapfel detailed the staff report. The home is currently non-conforming by about 15 feet and he was unable to issue a building permit. He directed them to the ZBA. On site we talked about things that needed to be done to prove that a variance is needed. At this point, I'm not sure where they are with the advanced treatment system. It is nearly complete according to Mr. Poineau. The home was built in 1934 and it is non-conforming on the front. It is an existing structure. He is looking at making it more conforming, and going up two stories.

Anderson discussed the procedures of the Variance Request Hearing

Mr. Poineau gave his presentation. He has a extensive history in planning and zoning. He consults with many area agencies on his projects. When I enter into a sensitive project like this, I have a good understanding of what the consequences are. I try to be as environmental conscious as I can. Kimberly Weder came to me with the proposal. The septic system was put in in 1999 and it is not working correctly and we are working on an advanced treatment system for this project. This is very tight space wise and we are extremely limited by wetlands on both sides. They would like a three bedroom house. They are committed to a 3000 square foot house. Putting the house in the conforming area, they wouldn't be able to turn a car around. They would have had to get a DEQ permit to put the garage in the wetlands. We would prefer to stay out of that sensitive area. We have brought the house back as much as possible. There is an error in my site plan. I am required to have the overhangs in the setback. We will move the house back two

feet to accommodate this. There was a lot of thought and work into this site plan. Could they do a smaller house? Could they re-configure? There aren't a lot of viable options. The only other option is to encroach on the wetlands in the back and this isn't something we want to do.

Anderson asked about the overhangs. Poineau said this refers only to the front encroachment. Anderson said it's going to be tight because of the garage? He said they need some kind of storage building and with that, it will be tight. There is only a difference of 940 square feet from the old house to the new on the footprint.

How do they plan on putting footings down? We will fill another foot and they will waive the 42" footing requirement. What about the creek? The creek is upland. What would happen if the option was brought up to have the garage attached to the house? You still wouldn't be able to turn around. Their initial option is not to do the storage building but I would like to leave them that option. Burdo asked why are you encroaching on this side? If we don't do that, we can't turn around. Will you have a problem with soil conservation? We aren't touching the wetlands on either side. Jankowski asked about different floor plans? If you move the bump out to the other side of the house it would encroach less. Poineau said it's a covered porch. Poineau and Jankowski looked at different options. Our opportunity is to do this project many times better than what it is now. Jankowski said if you eliminate the porch and move the bump out, you could get the house in there without encroaching. They wouldn't be able to turn around. Atkinson said either way it isn't our job to re-design. It is our job to determine if this plan, as presented, should be allowed. Poineau quoted 117.502 as a reason why this variance should be allowed. Gray said will it be a garage or a shed? Would it be possible to move the shed between the wetlands and the drainfield? Yes. It's not practical, but possible. Burdo asked about the mound. It will be replaced with a taller mound. Burdo asked if the garage could get smaller? Yes. It could. Is this extra square footage necessary? It's a Torch Lake home. It's what they would like.

Mr. Poineau concluded his presentation.

#### Public Comments

Jackie Stagmyer, neighbor to the south. They are wonderful people and they take great care of their property and we are in favor of the project.

Communication: This hearing was advertised in the Elk Rapids News on 7/24/14. A copy of the advertisement will be included with these minutes.

#### Letters Received:

Letter in support from James Roach and Anna Leas of 12111 SW Torch Lake Drive

Letter in opposition from Greg and Susan Payne of 12456 SW Torch Lake Drive

A Letter that was returned to sender: John Sheahan. He didn't get the 300 ft notice.

Anderson began board deliberations:

Jankowski said he wasn't trying to re-design the plan. He wanted to discuss the possibility of other alternatives such as reducing the size of the house or moving the floor plan or moving the bump out to the other side. I believe that the variance request should be denied because there are

other alternatives in accordance with 117.205 A, B, C, and D. He went through each of these and clarified his points.

Atkinson said she agrees with Jankowski. I don't support the approval of a variance request based on the history of this board and it's maintaining the 50 foot setback from the lake. There are other options available. It's a personal preference for the property owners rather than not being able to comply. The reality is each variance request that is approved becomes the new norm and it sets the precedent.

Kopkau said he is against the variance request. There are different options for the house 3000 square feet is a lot to me. Atkinson brings up a good point about precedence. In all the years I've been on the ZBA I don't remember getting a letter from a neighbor in opposition. We got one tonight and I think we need to listen to that. I'm not sure why this house couldn't be moved back. We aren't here to re-design their home, but there are other options.

Gray agrees with everything that has been said. He understands that they would like to have this size of a house. Unfortunately, we have to be conscious of the intent of the township and the zoning ordinance regarding encroachment on the setbacks.

Burdo agrees with the rest of the board. The setback should be upheld. A re-design will accommodate within the building envelope. I also question the drawing and it's accuracy.

Anderson said Jankowski wasn't attempting to re-design, but he was trying to point out that there are other options available. Anderson said he can think of many other ways he would do it. There are other viable options.

Anderson asked how long they have had ownership? Poineau said 15-20 years.

Motion to deny the requested 10' 11" variance request based on 117.300, 117.303 and 117.323 by Atkinson. Seconded by Kopkau.

Roll Call Vote:

Burdo: Yea based on 117.300, 117.303 and 117.323

Jankowski: Yea based on 117.2205

Anderson: Yea based on 117.2205 and 117.300, 117.303 and 117.323

Atkinson: Yea based on 117.300, 117.303, 117.323

Kopkau: Yea based on 117.300, 117.303, 117.323

Gray: Yea based on 117.300, 117.303, 117.323 and the relevant sections of zoning ordinance as noted in the staff report

Motion carried 6-0, Kingon absent.

Anderson thanked Poineau for his time. Mr. Poineau said he appreciated the board's hard work and he thinks they came to the right decision.

Variance Request for Doug and Chandra Morse: Property address 10299 SW Torch Lake Dr, Rapid City, MI 49676. Parcel #05-12-815-013-00. The Morse's are requesting an 11.02 foot

rear yard (road side) setback variance for the construction of a new home with garage and are planning on the removal of the existing mobile home at the base of the hill on said property.

Anderson read from information contained in the staff report which will be included with these minutes as a matter of record.

Weinzapfel discussed the uniqueness of this parcel. We are gaining the removal of the trailer and moving the old septic from near the lake and replacing it. The variance being requested is considerably less than the homes on both sides. The owner to the south did stop in and I discussed it with her. Regarding the steep slope issue, NW Torch Lake Drive had a landslide. It's been discussed to have a steep slope ordinance. It hasn't gotten that far, but it is an issue here. This home is modest and a single story. The variance request is a non-conforming lot and we lean toward a rear yard variance first.

Chandra Morse gave her presentation: It currently has a trailer on the property. We are proposing looking at the house going out over the slope. Based on the soil composition, we would have to invest in the slope about \$100,000. We are asking for a 2000 square foot house which would be handicap accessible due to my health. Neighbors to the north and south are already encroaching and are grandfathered in. Our piece of property was subdivided in 1939 and each lot would be able to house a single family home. Our proposal is to remove the trailer and go into the 35 foot road easement by just over 11 feet. This would remove the non-conforming trailer and due to the unique conditions of the land, this is a variance the should be approved. The septic system plan is accurate to the drawing and permit has been made and approved. One of the aspects of this drawing is that the well is down by the trailer. Because of where the neighbor's well, we are limited where we can put the septic. Mr. Morse said they are trying to minimize the footprint of the house and hammer it down to the smallest footprint we can do. We need a home that has the ability to have a wheelchair and maneuver it through the home. We want this to be the home we will be in for the rest of our lives.

**Public Comment:**

Fred Janke spoke in support of the project. This is a positive thing for the neighborhood.

Jodi Alger of Home Planning and Design spoke regarding the shoring up of the hillside and what that could potentially do to the ground cover.

Gloria Janke said their yard has a slight slope to it. Their yard is straight down. They do need the extra land to do what they need to do.

Communication: This hearing was advertised in the Elk Rapids News on 7/24/14. A copy of the advertisement will be included with these minutes.

**Letters Received:**

A letter from Gloria and Fred Janke of 7023 Cherry Ave in support

A letter that was returned to sender from Bruce Dennis and Jennifer Dennis

Kopkau asked regarding handicap accessible home. Chandra has MS so far she is doing well,

but she has trouble with her leg on occasion. The doors and halls will be wide enough to accommodate a wheelchair if necessary. The garage is also deep enough to be a ramp. Are you going to take the trailer out anyways? If we don't get the variance, we may need to sell the property so it may stay.

Burdo asked regarding the location of the well. The water will be pumped up from the lake? We will have to beef up the pump. Are you going to have this deck on the house? Yes. It is on the upper level.

Anderson said that hill is very unstable are you going to leave the trees in tact? We are going to take a lot of measures to keep the hillside stable. The first aspect is the total water flow and how we can use rain gardens toward the road to let water seep out from any roof runoff. We also won't be removing any stumps. Doug just retired from the DEQ as a wetlands biologist. We do plan to increase the plantings down below. Burdo asked about retaining walls? They would rather have the natural lakeshore and natural terracing. The soil under the proposed house will be stable? Yes.

Anderson said if this goes through, the trailer will be removed? Yes. Once the house is complete.

Gray asked about cutting some of the trees and leaving the stumps. That's fine until the roots rot. I would encourage you to leave as many of the trees as you can.

Weinzapfel asked about clear cutting for a view? No, this is just trimming up. If you do pass it, you can put a time requirement on the removal of the trailer.

Anderson closed the board for deliberations

Atkinson said granting this variance will not negatively affect neighboring properties. The removal of the trailer will make it more conforming. The land has significant issues. I am in favor of granting this request.

Jankowski said if there was ever a variance to approve, this is it. They ave done everything to make the impact as minimal as possible. The steep slope creates a barrier to building. They have kept the house size to a minimum so it doesn't encroach any more than the neighboring houses do. Based on the condition that the trailer be removed upon completion of the project, he would approve the variance request.

Burdo said he is in favor of the variance because your home will conform with the others in the neighbors. The septic will be closer to the road instead of by the lake. You are keeping your home to a reasonable size and the slope creates a barrier to reasonable building.

Gray asked for clarification regarding the removal of the trailer. Gray suggested that once the occupancy is approved, the trailer will be removed. Board members agreed. He would vote to approve based on the previous comments by Atkinson, Burdo, and Jankowski.

Anderson said he would suggest keeping the tree removal to a minimum. We cannot dictate this,